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Maps.

SUPREME COURT OF THE UNITED STATES.

No. ~~210~~. 129.

JOHN MAGWIRE, Plaintiff in Error,

v.

MARY L. TYLER ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

G. S. Gideon, Printer, No. 511 Ninth Street, Washington, D. C.

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State of Missouri, County of St. Louis, *ss.*

Be it remembered that on the twenty-second day of August, in the year of our Lord one thousand eight hundred and fifty-five, there was filed in the office of the clerk of the St. Louis Land Court, a petition, which is in the words and figures following, to wit:

[The original petition omitted by stipulation.]

And on the second day of July, A.D. 1856, there was filed an agreement in the words and figures following, to wit:

In St. Louis Land Court.

JOHN MAGWIRE
v.
MARY L. TYLER and others.

The clerk of the St. Louis Land Court, in making a transcript of the record for the Supreme Court, may omit the original petition and demurrer thereto.

KRUM & HARDING,
For Plaintiff.
HILL, GROVER & HILL,
Att'ys for Defendants.

ST. LOUIS, July 1, 1856.

Upon the filing of the "original petition," a summons was issued to the sheriff of the county of St. Louis, in words and figures as follows, to wit:

The County of St. Louis, State of Missouri, *ss.*

To the Sheriff of St. Louis County, greeting:

We command you to summon Wm. C. Tyler, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thos. L. Sturgeon, Joseph Templeton, Marshall Brotherton, Calvin Case, Benj. F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, George W. Goode and Frances S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William

F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Green and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, to appear before the judge of our St. Louis Land Court on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of October next, then and there to answer the complaint of John Magwire, as set forth in the annexed petition; and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of St. [SEAL.] Louis, this twenty-third day of August, in the year of our Lord eighteen hundred and fifty-five.

C. A. MANTZ,
Clerk.
By J. B. WALSH,
Deputy.

Sheriff's Return.

Upon which summon the sheriff made his return in words and figures as follows, to wit:

Executed this writ in the county of St. Louis, on the 24th day of August, 1855, by delivering copies of the same as furnished by the clerk, to Isaac H. Sturgeon, Daniel A. Rawlings, Marshall Brotherton, William L. Ewing, and Thomas J. Beirne; and by delivering a copy of this writ and petition as furnished by the clerk, to Louis A. Labeaume, on the 25th day of August, 1855; and by delivering a copy of this writ, on the 27th day of August, 1855, to William C. Tylor; and by delivering copies of this writ, on the 29th day of August, 1855, to David D. Mitchell, Sr., Fanny C. Mitchell, Taylor B. Mitchell and Wm. A. Pendleton; and by leaving copies of this writ at the usual places of abode of Mary S. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Charles G. Mitchell, and Mary A. Pendleton, all with-named defendants with a white person, over the age of fifteen years and members of said defendants' families; and by delivering a copy of this writ, on the 29th day of August, 1855, to George W. Sparhawk, Wm. H. Glasgow, Louis A. Benoist, John Brotherton, and John B. Gibson; and by leaving copies of this writ at the usual places of abode of Alfred Dryden, Margaret Dryden, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, and James Patterson, all the within-named defendants, with a white person

over the age of fifteen years and members of the said defendants' families, and on the 31st day of August, 1855, by delivering copies of this writ to Joseph Templeton and Calvin Case; and by leaving copies of this writ at the usual places of abode of Mary Gordon, Benjamin Vice, Seaborn Miller, Mark Chester Jennings, Benjamin F. Jennings, and Joseph Dennis, all within-named defendants, with a white person over the age of fifteen years and a member of said defendants' family; and by delivering copies of this writ on the 6th day of September, 1855, to Louisa R. Brown, Laura H. Brown, Mary Ann Lakenan, George W. Goode, and Francis S. M. Goode; and on the same date, viz., the 6th day of September, 1855, by leaving copies of this writ at the usual places of abode of James B. Brown, Robert B. Brown, and Matilda N. Taylor, with a white person over the age of fifteen years and a member of Brown's family; and by delivering a copy of this writ on the 3d day of September, 1855, to James R. Lackland; and on the 4th day of September, 1855, by delivering a copy of this writ to John Wickham; and by delivering copies of this writ on the 11th day of September, 1855, to Theodore P. Green, Thomas L. Sturgeon and John R. Shepley; and by delivering a copy on the 20th day of September, 1855, to Martha A. Wills; and by offering to read the petition to all the defendants; and by leaving a copy of this at the usual place of abode of Harriett M. Dean on the 20th day of September, 1855, with a white person over the age of fifteen years and a member of said Dean's family. Mary L. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Francis S. Tyler, Roberta Tyler, James Guthrie, Wm. Chambers, Edward D. Hobbs, Joseph Cochran, Susan P. Christy, Thomas A. Wright, A. B. Stone, G. B. Boomer, and L. B. Boomer, not found in my county.

TURNER MADOX,
Sheriff.
By J. S. WILKINS,
Deputy.

Fee, ...	$54 00
Non est, ...	8 50
	$62 50

And afterwards the following proceedings were had in this cause, to wit:

October Term, 1856. Saturday, January 19th, 1856.

Leave given sheriff to amend his return.

JOHN MAGWIRE
v.
WM. C. TYLER, L. A. LABEAUME, and others.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, January 26th, 1856.

Twenty days' time given plaintiff to file amended petition.

JOHN MAGWIRE
v.
TYLER, LABEAUME, and others.

And afterwards the following further proceedings were had in this cause:

March Term, 1858. Friday, March 12th, 1858.

Amended Petition filed in this Cause.

JOHN MAGWIRE, plaintiff,
v.
MARY L. TYLER, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Good and Frances S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Green and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, Geo. W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana Schamburgh, George Case, George T. Hardcastle and Adalade, his wife, defendants.

In the St. Louis Land Court.

To the Honorable Judge of the St. Louis Land Court, in Chancery sitting:

John Magwire, the plaintiff in the above entitled clause, by leave

of the said court, exhibits this his amended petition, and states, that on or about the second day of October, in the year 1793, one Esther, free mulatress, residing in the then town of St. Louis, exhibited her petition in the Spanish language to Don Zenon Trudeau, Lieutenant-Governor of the Spanish province, afterwards known as Upper Louisiana, asking for a concession or grant of land in the northern part of said town of St. Louis, situate on the border of the Mississippi river, to be bounded on the three sides by the domain of his Majesty the king of Spain, and on the other by the shores of the Mississippi, the northern part of which to be situated between the earthbarn, La Grange de Terre, and the bluffs of the Mississippi, having on each end four arpents, running about from the east-northeast to the west-southwest, and extending twenty arpents nearly, running from the east north-northwest to the south-southeast; to which petition there was annexed a plat or diagram, showing the form and relative position of the tract of land asked for; a copy of which petition, correctly translated into the English language, and a copy of said plat, are filed herewith, and marked A, and made an exhibit herein.

The plaintiff further states, that on or about October 3d, 1793, Don Zenon Trudeau, said lieutenant-governor, made his declaration and certificate in writing in the Spanish language, to the effect that he had put said Esther into possession of the said tract of land asked for by her in her said petition; a copy of said declaration and certificate, correctly translated into the English language, is filed herewith, marked B (s. exh.), and made an exhibit herein.

The plaintiff further states, that on or about the 5th day of October, 1793, the said Trudeau, lieutenant-governor aforesaid, made a concession in writing in the Spanish language, and in conformity with the laws, usage, and practice of the Spanish Government, of said tract or parcel of land to said Esther; a copy of which concession, correctly translated into the English language, is filed herewith, marked C., and made an exhibit herein.

The plaintiff further states, that on or about June 1st, 1794, one Joseph Brazeau, a citizen of the said town of St. Louis, exhibited his petition to said lieutenant-governor for a tract of land in the western part of said town, situated beyond the foot of the mound called the La Grange de Terre, of four arpents in width, which are to extend from the steep bank or beach (ecore) of the Mississippi in the west, quarter southwest, by about twenty arpents in depth, that shall begin at the foot of the hill on which stands the said Grange de Terre, ascending in a northwest course to the environs of Stony creek, so that the said tract thereby asked for be bounded on the east side by the Mississippi, and on the other sides in part by the king's domain, and in part by lands reunited to said domain; a copy of which petition, correctly translated into the English language, is filed herewith, marked D., and made an exhibit herein.

The plaintiff further states, that on or about the 10th of June,

1794, said lieutenant-governor made his declaration and certificate in writing in the Spanish language, to the effect that he put said Joseph Brazeau into possession of said tract or parcel of land, designated in his said petition, of four arpents front by twenty arpents deep, which shall extend in a north-northwest course from the foot of the hill where stands the Grange de Terre, ascending to the vicinity of the Rouisseau de Pierre (Stony creek), bounded on one side by the bank of the Mississippi, and the opposite side by the lands not conceded or reunited to his Majesty's domain; and at the two ends bounded on the north-northwest by the vicinity of Rocky creek, and on the other in the south-southeast shall be bounded by the land granted to the free mulatress named Esther; a copy of which declaration and certificate, correctly translated into the English language, is filed herewith, marked E., and made an exhibit herein.

The plaintiff further states, that on or about June 25th, 1794, the said Trudeau, lieutenant-governor as aforesaid, made a concession in writing, in the Spanish language, in conformity with the laws, usage, and practice of the Spanish government, of said tract or parcel of land last above mentioned, to said Joseph Brazeau—a copy of which concession, correctly translated into the English language, is filed herewith, marked F (s. exh.), and made an exhibit herein. And after said concession was made to him as aforesaid, said Joseph Brazeau took possession, and possessed and cultivated the same until he made sale of four arpents, that is to say, four arpents in width by four arpents in depth, making sixteen arpents in superficies, part and parcel of said four by twenty arpents, to Pierre Chouteau, as hereinafter stated.

The plaintiff further states, that on or about May 9th, 1798, the said Joseph Brazeau, by his deed of that date in the French language, sold and conveyed to one Louis Labeaume, sixteen arpents, part and parcel of said tract of land conceded to said Joseph Brazeau by said lieutenant-governor as aforesaid; the said parcel conveyed by said deed being four arpents in width by sixteen arpents in depth; but the said Brazeau reserved to himself four arpents of said tract conceded to him as aforesaid, which four arpents so reserved to be taken at the foot of the hillock in the southern part of the said four by twenty arpents conceded to said Brazeau as aforesaid. Which said tract of four by four arpents of land is situated within the limits of the outboundary line of the village of St. Louis, run in conformity to the first section of the act making further provision for settling the claims to land in the territory of Missouri, approved June 13th, 1812.

The plaintiff further states, that after the making of said deed by Brazeau to said Labeaume (the precise date the plaintiff is not able to state), the said Labeaume presented his petition to said lieutenant-governor in the Spanish language, stating in said petition in sub-

stance that he had purchased of said Brazeau a parcel of land which had but a very limited depth; and said Labeaume asked said lieutenant-governor that he would grant to him 360 arpents of land, including that which he had acquired from Brazeau, that is to say, 20 arpents in depth from the Mississippi, ascending Rocky Branch west, quarter south, by 16 arpents front along the Mississippi, to be taken from the descent of the road into the creek, which is the same front of the said petitioner's land; but no concession by the Spanish government or lieutenant-governor was ever made to said Labeaume of the quantity or tract of land asked for in said petition, or any part thereof. Although, on or about February 15th, 1799, the said lieutenant-governor acted upon the said petition of said Labeaume, and ordered that a survey should be made for said Labeaume of the land asked for in said petition, and that he be put into possession.

The plaintiff further states, that on or about April 10th, 1799, the Spanish government caused a survey to be made by Don Antoine Soulard, acting surveyor in said Spanish province, for said Labeaume, and which survey was intended and ordered to be made of the land that said Labeaume had asked for in his petition to the lieutenant-governor above mentioned; but the said surveyor Soulard, either by mistake or design, so made said survey as to include the whole of the four by four arpents of land which said Brazeau reserved to himself in his said deed to said Labeaume, as will more fully and at large appear by reference to said survey.

The plaintiff further states, that on or about September 22d, 1810, the board of commissioners for the adjustment of land titles in the territory of Missouri, acting upon said concession to Brazeau, his deed to Labeaume, and said Soulard's survey, and in pursuance of and in conformity with the laws of the United States in such cases provided, confirmed to said Joseph Brazeau's representatives four by (four) arpents of the tract or parcel of land that was conceded to him as aforesaid by the said lieutenant-governor, being the same four by four arpents which the said Brazeau and wife conveyed to said Pierre Chouteau as hereinafter stated, a copy of which confirmation is filed herewith, marked G, and made an exhibit herein.

The plaintiff further states, that the said commissioners, in pursuance of and in conformity with the laws of the United States in such cases provided, confirmed to said Joseph Brazeau four arpents of the tract or parcel of land that was conceded to him as aforesaid by the said lieutenant-governor, being the same four arpents which the said Brazeau reserved to himself in his said deed made to said Louis Labeaume mentioned hereinbefore, and said commissioners, by the same act, confirmed 356 arpents to said Labeaume—a copy of which confirmation is filed herewith, marked K (s. exh.), and made an exhibit herein.

The plaintiff further states, that the said commissioners in pur-

suance of and in conformity with the laws of the United States, on or about June 14th, 1811, issued their certificate in writing, numbered 983, to the effect that said Joseph Brazeau's representatives, then entitled to a patent under the provisions of the 4th section of the act of Congress, entitled "An Act respecting claims to lands in the territory of Orleans and Louisiana," passed March 3d, 1807, for four arpents of land, situated in the district of St. Louis on the Mississippi, and ordered the same to be surveyed, agreeably to a reserve made in the said sale of said Joseph Brazeau to said Louis Labeaume—a copy of which certificate is filed herewith, marked H, and made an exhibit herein.

The plaintiff further states, that on or about July 26, 1816, the said Joseph Brazeau and Therese his wife, by their deed of that date, written in the French language, conveyed all their right, title, claim, and interest in the said tract or parcel of land, conceded as aforesaid to said Brazeau, to Pierre Chouteau; the said Brazeau having long before the date of this deed agreed to sell and convey said four arpents to said Chouteau, and which deed was duly acknowledged and recorded in the recorder's office of St. Louis county on the same day said deed was made—a copy of which deed, correctly translated into the English language, is filed herewith, marked I, and made an exhibit herein.

The plaintiff further states, that in the month of November, in the year 1817, by authority of the surveyor-general of the United States for the district of Illinois and Missouri, the said four arpents of land reserved by said Joseph Brazeau as aforesaid, was surveyed; which survey was made by one Joseph C. Brown, deputy-surveyor under the said surveyor-general—a copy of which survey is filed herewith, marked J, and make an exhibit herein.

The plaintiff further states, that on or about June 1st, 1826, Pierre Chouteau and wife, by their deed of that date, duly recorded in the recorder's office of St. Louis county, sold and conveyed to one George F. Strother the said four arpents of land confirmed as aforesaid to said Joseph Brazeau, or his legal representatives; describing said four arpents in said deed in substance as follows: a tract of land containing four arpents, running on the river and running back four arpents, making sixteen arpents, being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by said Brazeau to Pierre Chouteau—a copy of which deed is filed herewith, marked K (s. exh.), and made an exhibit herein.

The plaintiff further states, that on or about September 3d, 1830, the said George F. Strother and Theodosia his wife, by their deed of that date, which is duly recorded in the recorder's office of St. Louis county, conveyed the said four by four arpents (making sixteen arpents in superficies) of land to John Mullanphy and John O'Fallon, in trust for the sole use, benefit, and behoof of and for the St. Louis Marine Railway Company, and which deed contained

and has in it a clause to the effect that said Mullanphy and O'Fallon (trustees as aforesaid), shall hold said property for the sole benefit of the St. Louis Marine Railway Company, and shall obey the written instructions of said company in all things relative to said premises—a copy of which deed is filed herewith, marked L, and made an exhibit herein.

The plaintiff further states, that some time in the month of November, 1840, the said George F. Strother departed this life, intestate, and in the month of March, 184–, Alexander Hamilton, Esq., was appointed by the Probate Court in and for St. Louis county, administrator of all and singular the property and effects of said Strother, as will appear by a copy of the letters of administration granted to him, filed herewith, marked M, and made an exhibit herein.

The plaintiff further states, that inasmuch as the personal property belonging to the estate of said George F. Strother was insufficient to pay and satisfy the debts established against said estate, the said administrator made application to said Probate Court in due form of law, and obtained an order from said court, authorizing said administrator to sell the real estate belonging to the estate of said George F. Strother, including in said order, among other lands, the said sixteen arpents which said Pierre Chouteau and wife conveyed to said Strother as aforesaid; and in pursuance of said order of said court, and in conformity with the laws of the State of Missouri, in such cases provided, the said administrator, on or about the 4th day of May, 1846, offered the said sixteen arpents of land for sale at public vendue, at the court-house in said county, and at said sale the plaintiff became and was the highest and best bidder therefor, and said sixteen arpents of land and all the right, title, and interest of the estate of said George F. Strother therein, were struck off to the plaintiff, and he thereby became the purchaser of said sixteen arpents; which sale was approved by said court. And afterwards, on the 4th day of June, 1846, the said administrator made his deed to the plaintiff, conveying to him the said sixteen arpents, and all the right, title, and interest of said Strother therein; which deed is duly recorded in the recorder's office of St. Louis county, and a copy of which is filed herewith, marked N, and made an exhibit herein.

The plaintiff further states, that on or about the 2d day of January, 1852, John O'Fallon, surviving trustee for said St. Louis Marine Railway Company (the said John Mullanphy having before that time departed this life), by the authority and direction of said Marine Railway Company, by his deed of that date conveyed the said sixteen arpents of land, and all the right and interest of said Marine Railway Company therein to the plaintiff; which deed is recorded in the recorder's office of St. Louis county, and a copy thereof is filed herewith, marked O, and made an exhibit herein.

The plaintiff further states that the said tract of four by four arpents of land, which was confirmed to Joseph Brazeau as aforesaid, being the same tract to which the plaintiff acquired title by the deeds before mentioned, is situate in the northern part of the city of St. Louis, in the county of St. Louis, and is designated and known by the description and boundaries following. Beginning at an old stone set in the eastern line of the common fields of St. Louis, where said eastern line intersects an old ditch known as Labeaume's south ditch, thence from said old stone eastwardly and along the line of said old ditch four arpents to the west bank of the Mississippi river, thence northwardly along the west bank of the Mississippi river four arpents, thence westwardly on a line parallel with said old ditch first mentioned four arpents, and thence southwardly and on a line parallel with the west bank of the Mississippi river four arpents to the place of beginning.

The plaintiff further states that all the defendants respectively claim title and the right to possess the parts and portions which they do respectively possess and claim of said four by four arpents of land confirmed to said Brazeau's representatives under Louis Labeaume or his representatives, and some time on or about the 25th day of March, 1852, the defendants fraudulently and unlawfully procured a patent to be issued to said Louis Labeaume or his legal representatives for the same four by four arpents of land which before that had been confirmed to said Joseph Brazeau's representatives as aforesaid, which patent is signed by the President of the United States, and the effect of which patent is to vest in the said legal representatives of said Louis Labeaume who are the defendants, the legal title of said four by four arpents confirmed to said Brazeau's representatives as aforesaid.

The plaintiff further states that at the time said patent was issued to said Labeaume's representatives the equitable right and claim to said four by four arpents of land confirmed to said Brazeau's representatives, as aforesaid, were vested in the plaintiff in virtue of his purchase thereof, and the several deeds of conveyance hereinbefore mentioned. And the defendants when they procured said patent to be issued to said Labeaume's representatives as aforesaid, had full knowledge and notice of the plantiff's said equitable right and claim to said four by four arpents of land.

The plaintiff further states that when the defendants severally acquired their several supposed or pretended rights or interests in or to said four by four arpents of land, they and each of the defendants had full notice and knowledge of the equitable right and claim of said Joseph Brazeau and his legal representatives to said four by four arpents of land, and the plaintiff avers that he is the representative of said Joseph Brazeau in respect to said four by four arpents of land, and that he the plaintiff is rightfully and equitably entitled thereto.

The plaintiff further states that the said tract of four by four arpents of land which was confirmed as aforesaid to said Joseph Brazeau's legal representatives, was at the time of the said confirmation thereof definitely located by specific metes and bounds corresponding substantially in all respects with the location and metes and bounds hereinafter stated by the plaintiff in his description and designation of the four by four arpents of land which he claims under and as the legal representative of said Joseph Brazeau.

The plaintiff further states, that the several defendants named in this petition either claim title to, or are in possession of the said four by four, or sixteen arpents of land, reserved as aforesaid by said Brazeau, to the extent and in the particulars following, viz.:

The defendant Mary L. Tyler claims title, as the only child and heir of said William Chambers, deceased, to lots 46, 48, and 51, and fractional lot *b*, in block 292; also lots 44, 52, and 54, in block 293.

The defendant Mary L. Tyler also claims, as devisee of her late husband, Robert Tyler, in trust for her children, who are also defendants, an undivided interest or estate in lots 4 and 6, in block 289, and lots 103, 104, 105, 112, 113, and 114, in block 321.

The defendant Robert Dodd is the tenant of said Mary L., and in possession of fractional lot *b*, and lot 48 in block 292.

The defendants A. B. Stone, G. B. Boomer, and L. B. Boomer are the tenants of said Mary L., and in possession of lot 51 in block 292, and lot 52 in block 293.

The defendant Seyburn Miller is the tenant of said Mary L., and in possession of lot 46 in block 292.

The defendant James Patterson is the tenant of said Mary L., and in possession of lots 4 and 6 in block 289, and lots 44 and 54 in block 293, and lots 103, 104, and 105, in block 321; and said Mary L. is in possession herself of lots 112, 113, and 114, in block 321.

The said Mary L. also claims title through her trustees, James Guthrie and William Chambers (the latter being a son of James Chambers), fractional lot *a* and lots 1, 2, and 3, in block 288; and the defendant Daniel A. Rawlings is her tenant, and in possession of the last-named lots.

The defendants James Guthrie and William Chambers have no other claim or interest, so far as the plaintiff knows or believes, except that they hold said fractional lot *a*, and lots 1, 2, and 3, in block 288, in trust for said Mary L. Tyler.

The defendants Isaac H. Sturgeon and Thomas L. Sturgeon claim the south half of block 294; and the defendants John Brotherton and John B. Gibson are their tenants, in possession of said last-mentioned lots.

The defendant Louis A. Labeaume claims title to fractional lot *c*, and lot 49 in block 292; and the defendant Thomas Shoffey is his tenant, in possession of said lot.

The defendant John R. Shepley claims title to lot 45 in block 293; and the defendants A. B. Stone, G. B. Boomer, and L. B. Boomer, composing the firm of Stone, Boomer & Co., are his tenants, in possession of said lot.

The defendant Edward D. Hobbs claims title to lot 53 in block 293; and said defendants Stone, Boomer & Co., are his tenants, in possession of the same.

The defendant Thomas A. Dryden claims title to lot 53 in block 293; and the defendant James Patterson is his tenant, in possession of said lot.

The defendant Joseph Templeton claims title to lot 102 in block 320, and he is in possession thereof.

The defendant Marshall Brotherton claims title to lot 115 in block 350; and the defendant George W. Sparhawk is his tenant, in possession thereof.

The defendant Calvin Case claims title to lot 116 in block 320, and he is in possession thereof.

The defendant Benjamin F. Jennings claims title to thirty feet of lot 106 in block 322; and the defendant Mark C. Jennings is his tenant, in possession thereof.

The defendant Harriett M. Dean claims title to lots 107 and 108, and fifty feet of lot 106 in block 322; and the defendant Joseph Dennis is her tenant, in possession of said lots.

The defendant Joseph Cochran claims title to twenty feet of lot 5 in block 289; and the defendant James Patterson is his tenant, in possession thereof.

The defendants Thomas J. Beyrne and William L. Ewing claim lot 7 in block 290, and they are in possession thereof.

The defendants Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Good and Frances S. M. Good, his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, David D. Mitchell, Jr., Susan P. Mitchell, Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary F., his wife, Theodore P. Green and William F. Wright, trustees of said Mary F. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of said Martha A. Wills, and Orleana Schaumburgh, claim title to lots 47 and 50 in block 292; and the defendant Benjamin Vice is their tenant, in possession of the said last-mentioned lots.

The defendant William C. Tyler, as devisee of his father, Robert Tyler, claims an undivided interest and estate with his sisters, who are also defendants, in lots 103, 104, 105, 112, 113, and 114, in block 321, and in lots 4 and 6 in block 289.

The defendants William C. Tyler, Mary L. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fanny S. Tyler, and Roberta Tyler are children of said Robert Tyler, and are interested in the

same property before mentioned, which was devised by said Robert Tyler to said Mary L., as before stated; and the said last-named children of said Robert Tyler, as the plaintiff has been informed and believes, are now infants under the age of twenty-one years.

The defendants Margaret, wife of Alfred Dryden, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, and Mary Gordon, are children of James Gordon, deceased, and, as heirs or devisees, his said children claim title to sixty feet of lot 5 in block 289, and lot 43 in block 293; and the defendant James Patterson is their tenant, in possession thereof.

The defendants Louisa R. Brown, James B. Brown, Robert B. Brown, Louisa H. Brown, Mary Ann Lakenan, and James R. Lackland, are the heirs and legal representatives of Lewellyn Brown, late of St. Louis county, deceased, and the said heirs and representatives of said Lewellyn Brown claim title to lot 101 in block 320; and the defendants John Brotherton and John B. Gibson are their tenants, and in possession of said last-mentioned lot.

The plaintiff further states, that since the institution of this suit, Calvin Case has departed this life, leaving as his only heirs-at-law George Case, his son, and his daughter Adalade, who is now the wife of George T. Hardcastle, who are made defendants herein.

The plaintiff further states, that since the institution of this suit, Thomas A. Wright has departed this life, leaving as his only heirs-at-law Mary H. Glasgow, William F. Wright, Martha A. Wills, and Orleana C. Schaumburgh, who are defendants herein.

The plaintiff further states, that the defendants claiming title and possession, as above stated, have combined and confederated together, and are now combined and confederated together for the purpose of keeping him out of possession and from the use and enjoyment of said four by four arpents of land; and they have hitherto by their acts, combination, and confederacy aforesaid, hindered and prevented the plaintiff from having, possessing, using, or enjoying said four by four arpents, or any part thereof; and the defendants now combine and confederate together for the purpose of keeping the plaintiff out of possession of said land, and to prevent him from getting possession thereof; and they have hitherto and do now prevent the plaintiff from taking or holding possession of said land,—all which actings and doings on the part of the defendants are contrary to equity and good conscience, and cause great damage and injury to the plaintiff; and the plaintiff alleges that the damage and injury which he has sustained by being kept out of the possession of said land, and by being deprived of the use thereof, is equal to the sum of $25,000; and that the total value of the whole of said four by four arpents of land, at the time of exhibiting this petition, set down at a fair and reasonable estimate, is the sum of $350,000; and the plaintiff further alleges that the defendants, while they have held, possessed, used, and enjoyed said four by four arpents of land,

have realized and received large rents, profits, benefits, and advantages from the use of said land, and which rents, profits, benefits, and advantages, realized and received as aforesaid by the defendants, are of the value of $20,000, and for which the defendants should account to the plaintiff.

Wherefore, and to the end that equity and justice may be meted out to the plaintiff, and that he may be protected and established in his just rights, the plaintiff asks judgment in the premises in this case as follows:

First. That this court, by its judgment and decree, divest out of the defendants, or out of all those who claim to have or hold any title or right in or to said four by four arpents (or sixteen arpents in superficies), that said Joseph Brazeau reserved to himself in his said sale and deed to said Louis Labeaume, and that the right or interest in said land, held or claimed by the defendants, or either of them, be, by the judgment and decree of this court, vested in the plaintiff.

Second. That, by the judgment and decree of this court, the defendants be required to surrender and yield possession of said four by four arpents of land, or of so much and such part or parts thereof as they or either of them may claim, possess, or occupy, to the plaintiff; and that he, the plaintiff, may, by the judgment, order, and process of this court, be put into possession of said land.

Third. That, by the judgment and decree of this court, the defendants may be required to account for and pay over to the plaintiff all the rents, profits, advantages, and benefits which the defendants have realized and received from the possession and use of said land, and that a just and proper account thereof be ordered and stated.

Fourth. That, by the judgment, decree, and restraining order of this court, the defendants, their agents and servants, may be enjoined and restrained from committing waste and injury to said land and premises.

Fifth. That, by the order, judgment, and decree of this court, the plaintiff have such other and further relief in the premises as to the court may seem meet and equitable.

KRUM & HARDING,
Attorneys for Plaintiff.

John Magwire, the plaintiff, makes oath and says that the foregoing petition, and the matters therein stated, he believes to be true.

JOHN MAGWIRE.

Subscribed and sworn to before me this 12th day of March, 1858, as witness my hand and seal at office the day and year last written.

E. W. DECKER,
Notary Public.

And afterwards the following proceedings were had in this cause, to wit:

Saturday, March 13th, 1858.

Answer to amended Petition.

JOHN MAGWIRE
v.
MARY L. TYLER, William C. Tyler, Mary S. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthree, William Chambers, Louis A. Labeaume, John R. Shiply, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Bierne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Good, Francis S. M. Good, his wife, David D. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Greene, and William H. Wright, trustees of Mary H. Glasgow; Martha A. Wills, Thomas A. Wright and John C. Wickam, trustees of Martha A. Wills; Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, Geo. W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana Schamburgh, George Case, George T. Hardcastle and Adelaide, his wife, defendants.

Which answer is in the words and figures following, to wit:

In the St. Louis Land Court of March Term, 1858.

JOHN MAGWIRE
v.
MARY L. TYLER and others, defendants.

The said defendants, each answering for himself or herself severally, answer the plaintiff's petition, and each state severally as follows:

That the premises in controversy are situate on the river Mississippi, about four arpents north of the Big mound, a most noted monument in St. Louis, called by the French La Grange de Terre,

(earthen barn). This mound is an artificial erection situate on the brow of the first bank of the prairie, west of the bank of the said river, at the distance of about 28 arpents north of the northern wall of the fortifications of the old Spanish town of St. Louis, and about four and a half arpents west from the bank of the river. The bank on which the mound stands is the eastern boundary of the grand prairie covered by the St. Louis common fields; and the land descends with a gentle slope from the brow of it to the small prairie, or bottom land, between it and the river. This bank of the prairie is about 4½ arpents west of the river bank, where the mound stands, and about sixty feet above the level of the prairie along the river, and it runs nearly parallel with the river, at that distance from it, for a mile or more towards the south. At the north foot of the mound, this bank of the prairie curves towards the northwest, and running to the southwest corner of the southern and western ditches of Labeaume, as marked on the Spanish survey of Labeaume's concession, in 1799. It thence runs about 16 arpents northwardly parallel with the river, at the distance of about seven arpents from the bank of the river, where it becomes broken, and the land descends more or less abruptly into a small creek, called the Rocky Branch, about 25½ arpents north of the mound. South of the Big mound, about 18 arpents distant, there are small mounds on the same bank of the prairie. The bank of the prairie is higher where the Big mound stands than at any other point between the old town of St. Louis and the Rocky branch.

The first Spanish grant north of the town of St. Louis, on the Mississippi river was made to Esther, a mulattress, in October, 1793, by the following description—"The north part of the present concession shall be situated between the hillock named the Earthen Barn and the banks of the Mississippi; thence descending the said river as far as the complement and extent of twenty arpents in length, &c." This description locates the north line of Esther's between the Big mound and the river, and the call for quantity is to the extent of 20 arpents south of that point on the river.

The second Spanish grant on the river north of the town was made in June, 1794, to Joseph Brazeau, under whom the plaintiff claims. Brazeau petitioned for lands situated *beyond the foot of the mound* called the Earthen Barn, of the width of four arpents, &c., and the grant to him was for 4 by 20 arpents "from the foot of the hill where the Earthen Barn is situated, thence up to the environs of the Rocky Branch, &c."

No Spanish or United States survey has ever been made of either of these grants, but Esther and Brazeau took possession of their respective tracts of land so granted, the one south of, and the other north of, the Big mound. Esther possessed as the land granted to her that portion which lay south of the Big mound, between it and the small mounds embracing the little prairie, between the bank of

the prairie and the river Mississippi; and Brazeau possessed as the land granted to him, the little prairie north of the Big mound along the river. He cultivated fields up to the foot of the Big mound, and built a limekiln on the bank of the river, about 2½ arpents north of said mound. The Big mound was the great natural monument that designated the division line between the possessions of the two parties, Esther and Brazeau, in Spanish times.

On the second of September, 1794, Esther conveyed her interest in the grant to her, to Jacque Clamorgan, her lord and master, by deed, and Joseph Brazeau was a subscribing witness thereto. In August, 1797, the Esther grant was annulled by the lieutenant governor, for the reason that the delay granted to begin improvements had expired, and a grant of 600 feet square was made at the same time to Antoine Roy upon the same land, that is, upon the southern portion of Esther's grant. (See Roy's grant.)

When Soulard, the Spanish surveyor-general, was about to survey the Roy tract, he notified Clamorgan as the owner of the Esther grant, according to the Spanish custom, and Mr. Clamorgan formally claimed "that the ground on which he was operating had been granted to him for a number of years." The southwest corner of the Roy's tract is 19 arpents south of the north foot of the mound, and about 23 arpents south of Labeaume's south ditch.

On the 9th of May, 1798, Brazeau sold, by deed, 4 by 16 arpents of his tract to Louis Labeaume, under whom defendants claim, and reserved his fields and limekiln, near the Big mound. The descriptive words of the deed are, "which consists of four arpents of land, to be taken from the foot of the hill or mound commonly called La Grange de Terre, the earthen barn, by twenty arpents in depth, bounded by the Rocky branch at the extremity, which is opposite the said mound, east by the Mississippi river, and west by the king's domain—the said Brazeau "reserving to himself four arpents of land from the foot of the mound in the south part of the tract." This deed was executed before the lieutenant governor, who officially certified to the sale. The confirmation under which the plaintiff claims was void, the board of commissioners, in 1810, having no jurisdiction of Brazeau's claim, for want of notice to the recorder of land titles thereof by Brazeau.

Labeaume, after said purchase of Brazeau, immediately inclosed the land with embankments of earth and ditches, the height of the embankments from the bottom of the ditches being about six feet, and on the top of the embankments pickets were driven into the ground so as to make a stockade inclosure. He also erected houses upon the grounds inclosed, and lived there with his family from 1798 until 1814, and left his agent in possession from that time until April, 1816, when he sold to William Chambers. The north and south ditches of Labeaume were 16 arpents and 40 French feet apart. Brazeau's limekiln was 300 feet south of the south ditch of Labeaume,

and he worked that kiln and cultivated the fields south of the ditch, up to the time he sold to Labeaume, and after the sale he rented the kiln to one Primeau.

It appears from a deed, made by Brazeau to Pierre Chouteau, in 1816, that at the time of the deed to Labeaume, of 1798, Brazeau had made a verbal sale of the 4 by 4 arpents at the foot of the mound to Pierre Chouteau. (See deed referred to.)

In February, 1799, Labeaume asked for a grant of 360 arpents "of land including the part which he had acquired of Brazeau, that is to say, 20 arpents in depth from the Mississippi along the Rocky branch west one-fourth south, by 16 arpents front along the river, to be taken at the descent of the road into the branch, which is the very front of the petitioner's land, the angle formed by the line perpendicular from the road to the river will nearly complete the land demanded by the petitioner, &c." (See petition and grant referred to.)

On this petition the same lieutenant governor who certified to the Brazeau reservation, ordered a survey, the 17th February, 1799, and on the second of March, 1799, Don Antonio Soulard, Spanish surveyor of Upper Louisiana, made the survey in the presence of the adjoining neighbors, according to the Spanish custom, and returned the plat and notes of survey, which were duly recorded in the archives of the government, on the 15th of April, 1799. On Soulard's survey the ditches are marked, and the houses of Labeaume, and the quantity of land surveyed was 374 arpents. The south ditch of Labeaume is 4 arpents and 20 French feet north of the north foot of the Big mound, at a point 4 arpents west of the river.

The reservation of Brazeau by his deed, of 4 by 4 arpents on the Mississippi, from the foot of the Big mound, locates it south of and adjoining the southern ditch of Labeaume.

In February, 1806, Labeaume filed his claim for confirmation under the act of Congress of the 2d March, 1805, as follows: "Louis Labeaume (claimed) 374 arpents of land, conceded in part to Joseph Brazeau, the 20th June, 1794, and the other part to Louis Labeaume, the 15th February, 1799, settled and cultivated since both these dates. Under this claim he filed the following paper, evidences of title, pursuant to the act of Congress, and they were duly recorded by the recorder of the land titles, to wit:

1st. The petition of said Brazeau for 4 by 20 arpents.

2d. The order of survey of Zenon Trudeau, lieutenant governor, thereon.

3d. The grant to Brazeau of 4 by 20 arpents.

4th. The certificate of the sale of 4 by 20 arpents by Brazeau to Labeaume, with a note of the reservation of 4 arpents written on the grant by the lieutenant governor, as follows: I do certify, that the above concession, except 4 arpents, has been sold, &c., to Louis Labeaume, by deed, proven before us, the 9th May of this year, and

deposited in the archives of this post. St. Louis, of Illinois, the 12th of May, 1798. Zenon Trudeau.

5th. The petition of Labeaume for an extension of the 16 arpents front purchased of Brazeau, 20 arpents west, and for the angle at the Rocky branch, about 360 arpents.

6th. The order of survey by Trudeau to Soulard.

7th. The survey by Soulard of 374 arpents, and his plat thereof, for Louis Labeaume.

On the presentation of this claim upon the foregoing papers, the clerk who read the certificate annexed to the grant to Brazeau supposed the 4 arpents reserved were within Soulard's survey of 374 arpents, and he entered in the minutes that Labeaume's grant included the whole of the Brazeau grant. This was a mistake of the clerk, who did not have the Brazeau deed before him, but only the governor's certificate. Mr. Labeaume abandoned all claim under the Brazeau grant, and demanded a confirmation directly under the one to himself—the Soulard survey. The board, upon proof of possession, in 1800, by Labeaume, and that he was the head of a family, confirmed to him 356 arpents, and 4 arpents to Joseph Brazeau, and ordered that the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume, and as respects the 4 arpents agreeably to a reserve made in a sale from Brazeau to Labeaume, recorded in Book C, page 339, of the recorder's office. This confirmation was made 22d September, 1810, and confirmation certificates were duly issued—one to Labeaume and one to Brazeau. Brazeau, at the time of this confirmation to him, did not own, or claim to own, the said reservation; he had sold it to Pierre Chouteau, who had included the whole of it in a larger grant made to him by an order of survey of October, 1799, surveyed the 17th June, 1803. In P. Chouteau's petition of 1799, he asked for the land bounded *north by the line of Mr. Labeaume's tract*, south by the line of Mr. Antoine Roy's tract, east by the river, and west by the domain of his Majesty.

Chouteau was the owner of the Brazeau reservation at the time of the Soulard survey of Labeaume's tract. In June, 1803, when Chouteau's grant was surveyed by Mr. Soulard, the parties, Labeaume and Chouteau, were present, and Labeaume's south ditch was marked upon the plat as a part of the north line of Chouteau's tract, and the surveyor returned his plat of boundaries, stating thereon that Chouteau's tract was bounded north by the land of Louis Labeaume. (See grant and survey.)

This confirmation to Brazeau, under which plaintiff claims, is null and void; the board had no jurisdiction over the Brazeau case, and no notice had been filed by Brazeau, or any one for him, for the confirmation. Pierre Chouteau procured a confirmation in 1809 from the same board of commissioners for the land between La-

beaume and Roy. He purchased the Esther claim of Clamorgan in 1810, and procured the formal title of the reservation from Brazeau, in 1816, by deed, which describes the reservation three times as land "to be taken from the foot of the mound called the Earthen Barn." (See deed from Brazeau to Chouteau.)

In 1817, Rector and Barcroft entered for Henry Peyroux all the land south of Labeaume's south ditch, including the reservation and all of Pierre Chouteau's tract, under a New Madrid earthquake certificate, No. 184. Pierre Chouteau, on the 20th of May, 1826, protested in writing to the commissioner of the General Land Office against the issuing of a patent on said certificate, that it covered the whole of a small tract of 16 arpents which he had purchased from a Mr. Joseph Brazeau, to whom it had been confirmed by the board of commissioners. This is a solemn act of location by Chouteau of the reservation south of Labeaume's tract. Chouteau conveyed the reservation to Strother, in June, 1826. Strother's administrator to John Magwire, in June, 1846, and Magwire founds his suit on this title through Pierre Chouteau. The plaintiff has no conveyance from Brazeau for any land north of the south ditch of Labeaume. If Brazeau's grant was included within Soulard's survey for Labeaume, then Mr. Brazeau located his reservation in the wrong place. But if the mistake in the deed of Brazeau to Labeaume be admitted, and if he located his reservation at the foot of the mound when he intended to locate it north of the south ditch of Labeaume, it is too late to relocate now, for the title of Brazeau passed to Labeaume, in 1798, for the whole of Brazeau's tract, excepting only the 4 by 4 arpents at the foot of the mound. If Brazeau had no land where he reserved these 16 arpents, he, or Chouteau, his vendee, should have proceeded to correct the mistake in the deed of 1798 during the time Labeaume held the title. But Labeaume held possession according to the terms of his deed and Soulard's survey for eighteen years, when he sold the whole tract of 374 arpents to William Chambers by deed of April, 1816, for $7460, a full consideration, and Chambers had no notice of the alleged mistake in the location of Brazeau's reservation, and he was not put upon inquiry by the title-papers; and he was an innocent purchaser for a valuable consideration of the tract embraced within the Soulard survey. Up to the purchase by Chambers, the grantor of the defendant, there never had been any claim by Joseph Brazeau or Pierre Chouteau for the location of the reservation north of the south ditch of Labeaume. From 1799 until 1823 Mr. Chouteau had acquiesced in the possession of Labeaume to the south ditch, which ditch was established by the surveyor-general of the Spanish province of Upper Louisiana, in March, 1799, as the division line of stockade fence between Labeaume's land and Brazeau's reservation, and this is an estoppel against Pierre Chouteau and all persons claiming under him, including the plaintiff.

In October, 1799, Mr. Chouteau, in his petition to the lieutenant governor, recognized the ditch and stockade fence of Labeaume as the boundary between Labeaume and himself; and he calls the land north of that boundary, Labeaume's land. In June, 1803, Mr. Chouteau's survey of his grant was made by the same surveyor, in his presence, and in the presence of Labeaume, when the stockade fence or ditch of Labeaume was again officially recognized and established as a division fence between Labeaume and Chouteau. For fifty-four years prior to this suit, Labeaume and Chouteau, and their grantees, have possessed their land, the one south of, and the other north of, the line of this stockade fence and ditch so recognized and established as the boundary line between their respective tracts. And these defendants further state, that by the said recognition of the south ditch of Labeaume, as the boundary line between the lands of said Pierre Chouteau and Louis Labeaume, for so long a period of time, they, the said Pierre Chouteau and Louis Labeaume, and all persons claiming through or under them as parties or privies, are mutually bound and estopped from disputing the same or claiming adversely thereto; and that the long possession of said parties and their privies of the said several tracts of land in accordance therewith, has vested a complete title in the said representatives of Louis Labeaume to the land in United States survey No. 3333.

These defendants aver, that the said southern ditch was dug for the purpose of making an embankment on the northern margin thereof, to serve as an inclosure, and on the top of the said embankment pickets were driven into the ground, so as to make a stockade inclosure of that part of Louis Labeaume's tract.

Defendants deny that the survey by Soulard, of 1799, for Labeaume, included any part of the four by four arpents reserved by Brazeau in his deed to Labeaume of 1798.

Defendants deny that the proper or true location of said four by twenty arpents of Joseph Brazeau was or is as stated in the plaintiffs' petition, but on the contrary thereof, the location of the southern part of said Brazeau's tract was truly given by the said United States survey No. 3332.

Defendants deny that Louis Labeaume ever recognized the right of a proprietorship of said Joseph Brazeau to said sixteen arpents of land known as Brazeau's reservation, at any other place than as located by said United States survey No. 3332, for Joseph Brazeau's legal representatives, and the possession of said Brazeau and of Pierre Chouteau, his grantee of said reservation, was in accordance with said United States survey No. 3332, and the said Labeaume always claimed the land within Soulard's survey, and the survey of the United States No. 3333, as the land belonging to him.

Defendants aver that said land, north of Labeaume's ditch, was always held in possession by actual possession and by notorious acts of ownership on the part of Chambers, Christy, and Wright, and

their representatives and grantees, from and after the year 1816 until the year 1846, continuously, and adverse to all other persons.

These defendants deny that the said deed of the 26th day of July, 1816, conveyed the said Brazeau tract to said Pierre Chouteau, or any part thereof north of said southern ditch of Labeaume, but on the contrary thereof, the said deed only purports to convey four arpents by four arpents at the foot of the Big mound, south of said southern ditch of Labeaume.

These defendants deny the said survey of 1817 was made by authority of the surveyor-general of the United States for the district of Illinois and Missouri. And they deny that the said four by four arpents of the Brazeau reservation were surveyed under said alleged survey of 1817. And these defendants aver that said survey of 1817 was not made pursuant to any lawful instructions, and they further aver that the said survey was never approved, according to law, but on the contrary thereof, the said survey was signed by the surveyor-general by mistake, and the same was annulled and disproved, and never was held or regarded as a valid or binding survey by the United States.

These defendants deny that the said deed of the first of June, 1826, from Pierre Chouteau and wife to George F. Strother, conveyed any land north of the southern ditch of Louis Labeaume. And they deny that the said deed of George F. Strother and wife to the trustees of the Marine Railway Company conveyed any land north of the southern ditch of Labeaume.

Defendants have no knowledge or information sufficient to form a *belief*, whether the property personal, belonging to the estate of said George F. Strother, was insufficient to pay and satisfy the debts established against said estate; nor whether said administrator made application to said Probate Court, in due form of law, and obtained an order from said court, authorizing said administrator to sell said real estate as alleged, nor whether said Brazeau's reservation located as claimed by plaintiff was included therein, nor whether said premises in question were sold in conformity with law as stated in plaintiff's petition.

Defendants deny that the plaintiff acquired the right, title, and interest of the Marine Railway Company in and to the premises in question by deed of the 2d day of January, 1852, as alleged, and defendants have no information or knowledge sufficient to form a *believe*, whether the said John O'Fallon was authorized in due form of law by the said Marine Railway Company to convey the said premises in question to the plaintiff.

These defendants deny that the said tract of land alleged to have been confirmed to Joseph Brazeau, and to have been acquired by plaintiff, is designated or known by any such description or boundaries as are set forth in plaintiff's petition, but on the contrary thereof, it is well known as four by four arpents at the foot of the

mound, called La Grange de Terre, bounded north by the southern ditch of Labeaume's tract, and east by the river Mississippi.

These defendants deny that they ever fraudulently or unlawfully procured a patent to be issued to said Louis Labeaume's legal representatives for any land, or for any part or the whole of said four by four arpents of land alleged to have been confirmed to Joseph Brazeau's representatives; and these defendants deny that said four by four arpents of land, conveyed to Pierre Chouteau by said Brazeau, is within said patent to the said Louis Labeaume or his legal representatives; and these defendants deny that said patent vests in the representatives of Louis Labeaume the legal title to any part of said four by four arpents described in said deed from Brazeau to Chouteau, or any part of the four by four arpents described in the deed of Brazeau to Labeaume, and referred to in the alleged confirmation to Brazeau.

These defendants deny that at the time said patent was issued to Labeaume's representatives, any equitable right or claim to any land within the boundaries of said patent were vested in the plaintiff by virtue of any purchase or any deed of conveyance hereinbefore mentioned; and these defendants deny that at the time when the said patent was issued to Labeaume's representatives, they or either of them had any knowledge or notice of the plaintiff's pretended equitable right or claim to said four by four arpents of land as alleged by plaintiff.

These defendants severally deny that at the time they or either of them severally acquired their several rights or interests in or to said four by four arpents of land, they or either of them had any notice or knowledge of any equitable right or claim of said Joseph Brazeau or his legal representatives to the whole or any part of said four by four arpents of land as lying within the boundaries of Labeaume's patent.

These defendants deny that said plaintiff is the legal representative of said Joseph Brazeau as to any land within Labeaume's patent. And these defendants deny that plaintiff is rightfully or equitably entitled to any land within Labeaume's patent.

These defendants deny that the said tract of four by four arpents of land confirmed as alleged to said Brazeau, was ever definitively located as claimed by plaintiff within Labeaume's patent, or elsewhere, except at some point south of the southern ditch of Labeaume.

These defendants deny that said Daniel A. Rawlings is the tenant of Mary L. Tyler, in possession of the said lots 1, 2, 3, and fractional lot (A) in block 288. And aver that said plaintiff fraudulently procured the tenants of William Chambers before his death to attorn to him, the plaintiff, and fraudulently procured possession of said block of ground some time in the year 1849.

These defendants aver that under the said confirmation to Louis Labeaume, and pursuant to the certificate of confirmation thereon,

an United States survey of said confirmation was duly made and approved by the surveyor-general of Illinois and Missouri in 1852; and the said survey was duly certified to the recorder of land titles, and he issued a patent certificate thereon, and thereupon the United States duly issued a patent pursuant to said survey to Louis Labeaume and his legal representatives, and said survey and patent include the premises sued for by the plaintiff, and the defendants severally derive their title to the said premises from and through said Louis Labeaume.

These defendants further aver that under the said alleged confirmation to Joseph Brazeau, and pursuant to the certificate of confirmation thereon, an United States survey of said Brazeau's confirmation was made and duly approved by the surveyor-general of Illinois and Missouri in 1852, and the said survey was duly certified to the recorder of land titles, and he issued a patent certificate thereon, and thereupon the United States duly issued a patent, pursuant to said survey, to Joseph Brazeau and his legal representatives, and said survey and patent, under the said confirmation, do not include the premises in controversy, or any part thereof. And these defendants aver that the said patent to the said Joseph Brazeau or his legal representatives, was duly forwarded to the recorder of land titles to be delivered to the legal representatives of Joseph Brazeau, and that the same was demanded by one of the legal representatives of Joseph Brazeau of the said recorder of land titles, but the same was refused to be delivered; and although the said Brazeau's patent has been introduced in evidence in two actions, one wherein John Magwire was plaintiff against —— Vice, and one wherein Edward M. West was plaintiff, and Joseph Cochran was defendant, yet the said patent of the remaining in the hands of said recorder of land titles for about six years, has been lately ordered by the commissioner of the General Land Office to be returned to Washington, upon the false pretence that no one of the representatives of Brazeau would receive the same.

Defendants aver that said United States survey of said respective confirmations are conclusive evidence of the location of each of said tracts, and concludes both the plaintiff and the defendants; that the confirmation of each of said tracts was subject to the condition of survey, and that each of said patents are conclusive evidence of the location of each tract embraced therein, in strict accordance with the confirmation, and is binding upon the United States, the plaintiff, and all other persons.

Defendants further aver, that plaintiff conveyed the whole of said Brazeau reservation lying south of the said southern ditch of Labeaume to Louis V. Bogy by deed dated the sixth day of June, 1846, which deed is herewith filed as an exhibit. Defendants aver, that the location as given by said surveys Nos. 3333 and 3332, and the

said patents, are the true and correct locations of said two tracts of land under the said confirmations.

Defendants aver, that the pretended confirmation to Joseph Brazeau, was wholly void, for want of jurisdiction in the board, and that no title for any land could pass to Brazeau thereunder, and that the patent vests the only title ever granted to him for Brazeau's representatives or to his legal representatives by the government of the United States.

Defendants further aver, that William Chambers, William Christy, and Thomas Wright, were innocent and bona fide purchasers, for a full, fair, and valuable consideration, of the said Labeaume tract and the land included within the survey of Don Antonio Soulard, of 1799, which is identical with the United States survey, No. 3333; that they had no notice of the pretended claim of Brazeau for said sixteen arpents of land within the said Soulard survey, and the defendants are in like manner innocent bona fide purchasers and representatives of said Chambers, Christy, and Wright. And the defendants and those under whom they claim, have been in the actual, adverse, and continuous possession of the premises sued for for more than 20 years next before the commencement of this suit.

Defendants further aver, that the plaintiff is bound and precluded from claiming or having the relief prayed for, by reason of the great lapse of time since the alleged error in the location of said Brazeau's reservation, and by the great lapse of time since the same was discovered by the plaintiff.

Defendants further aver, that the title to the 16 arpents front by four arpents in depth, acquired by Labeaume in 1798 under the deed from Joseph Brazeau to him was a just title; that the said deed gave a title capable of transferring the property, that said Brazeau was then resident in the town of St. Louis, where said land was situate, and continued so to reside therein for more than ten years thereafter; that said Labeaume immediately after the said deed was executed, dug the said ditches, and made the said embankments, and put pickets thereon, and thereby inclosed the premises in question sued for, and held the same as his own so inclosed, and lived thereon for more than ten years successively prior to the first day of January, 1816. Whereby said Labeaume acquired all the right, title, and estate of said Brazeau, by the Spanish law of prescription then in force in the territory of Missouri and the territory of Upper Louisiana; and these defendants deny all confederacy and all combination for the purpose of keeping plaintiff out of possession of said premises, or for any purpose; and these defendants deny having hindered or prevented the plaintiff from having, possessing, using, or enjoying the said land, in any manner otherwise than they would hinder any person without any right or title, from taking possession of their property of which they and those under whom they claim have been possessed for more than a half a century; and these defendants

admit that they will hold the said land and the possession thereof against the plaintiff.

Defendants severally deny that plaintiff has sustained any damage by reason of the premises; and they have no knowledge or information sufficient to form a belief what the rents and profits of said premises in the aggregate would amount to.

And these defendants, as to each averment in plaintiff's petition in any manner in conflict with any allegation in this answer, say, that they deny such averment. And as to each of the said instruments of writing referred to or mentioned in this answer, which are not made exhibits in the plaintiff's petition, these defendants are ready and offer to produce to the court, whenever so directed, all the originals within their control, and certified copies of all others.

And these defendants further aver, that this court has no jurisdiction over the location of Brazeau's confirmation, after survey thereof by the United States; and defendants aver that the United States should be a party to such action, in order to give any court jurisdiction thereof. And these defendants, having fully answered, ask for judgment and for their costs.

BRITTON A. HILL,
Attorney for Defendants.

Oath of defendants waived by plaintiff, and this answer to the amended petition may be filed instanter. March 13, 1858.

The affidavit to the answer of any one of the defendants is sufficient.

K. & H.

County of St. Louis, *ss.*

Isaac H. Sturgeon, one of the defendants in the above entitled cause, being duly sworn, says that he believes the foregoing answer, and the matters therein as stated are true.

Sworn to and subscribed before me, this 13th day of March, 1858.

ISAAC H. STURGEON.

Witness my hand and notarial seal.

FRANCIS W. RAWLE,
Notary Public.

St. Louis, Mo.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, April 24th, 1858.

Stipulation.

In the St. Louis Land Court.

JOHN MAGWIRE
v.
MARY L. TYLER, William C. Tyler, William C. Tyler, Mary S. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louisa A. Labeaume, John E. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Goode and Francis S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Greene and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, and Orleana Schaumburg, George Case, George T. Hardcastle and Adalade, his wife.

In the St. Louis Land Court.

JOHN MAGWIRE
v.
MARY L. TYLER, and ninety others, defendants.

It is stipulated and agreed by and between the parties to this suit, that, on the hearing and trial of this cause, either party may read in evidence so much of the testimony taken and filed by the reporter in the suit of John Magwire against Benjamin Vice, in the St. Louis Court of Common Pleas, as may be competent and relevant. The said evidence is the same that is contained in transcript of said case

of Maguire *v.* Vice, on appeal from said Court of Common Pleas to the Supreme Court of Missouri. Either party may object to the competency or relevancy of said testimony with like effect, as if the witnesses, whose testimony is therein reported, were upon the stand; but no objection shall be made as to the form in which said testimony is taken and presented, nor that it was not given in this case. Any documentary evidence used on the trial of said case of Magwire *v.* Vice, if preserved in the record in the Supreme Court of said case, may be read from such record by either party, if so desired by either party, subject to all legal objections by the other party for incompetency, but not as to any matter of form.

KRUIN & HARDING,
Attorneys for Plaintiff.

BRITTON A. HILL,
Attorney for Defendants.

April 12, 1858.

And afterwards, the following proceedings were had in this cause, to wit:

Monday, May 24th, 1858.

Jury Waived.

JOHN MAGWIRE
v.
MARY L. TYLER, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Goode and Frances S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Greene and William H. Wright, trustee of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustee of Martha A. Wills, Alfred Dryden, and others.

Trial begun.

Now, at this day came said parties, by their respective attorneys, and no jury being required by either party, this cause is submitted to the court, upon the amended petition, answer thereto, evidence, and

proofs adduced, and the argument of counsel; and the court having heard, and not being fully advised of and concerning the premises, takes time to consider thereon.

And afterwards, the following further proceedings were had in this cause, to wit:

Finding and Judgment filed.

Tuesday, June 22d, 1858.

Finding and judgment filed in this cause in words and figures as follows, viz.:

JOHN MAGWIRE

v.

MARY L. TYLER, William C. Tyler, William C. Tyler, Mary S. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louisa A. Labeaume, John E. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochron, Thomas J. Beirne, William L. Ewing, Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Goode and Frances S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton, and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Greene and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lakeland and Orleana Schaumburg, George Case, George T. Hardcastle and Adelade his wife.

Cause submitted to the Court.

This cause came on to be heard before the court, and after hearing all the evidence of the parties, the court find from the evidence the following facts, viz.:

That on the fifth day of October, in the year 1793, the Spanish government conceded or granted to one Esther, a free mulattress, a tract or parcel of land situate on the border of the Mississippi river, and between that and the earth-barn, La Grange de Terre, as stated in the plaintiffs' petition. The concession to Esther had no definitive location by the terms of the grant, but she took possession under said grant of a tract of land lying between the Big mound and the Mississippi river.

That on the twenty-fifth day of June, in the year 1794, the said Spanish government conceded or granted to one Joseph Brazeau a tract or parcel of land of four arpents in front by twenty arpents in depth as described and bounded as stated in the plaintiffs' petition. That the said Brazeau took possession of the said tract or parcel of land so granted by said government about the time of said concession. That afterwards, on the ninth day of May, in the year 1798, the said Joseph Brazeau, by his deed of that date, sold and conveyed the said tract or parcel of land conceded and granted to him as aforesaid, to one Louis Labeaume, excepting, however, and said Brazeau in his said deed reserved to himself four arpents of said tract of land "to be taken at the foot of the hillock in the southern part of said land;" that the said four arpents so reserved by said Brazeau in his said deed to said Labeaume are situate within the limits of the outboundary line of the village of St. Louis, run in conformity to the first section of the act of Congress making further provision for settling the claims to land in Missouri territory, approved June 13, 1811.

That after said sale and conveyance to Labeaume by Brazeau, but prior to the fifteenth day of February, in the year 1799, the said Louis Labeaume petitioned said Spanish government for a grant of three hundred and sixty arpents of land including that which he had acquired of said Brazeau—that is to say, twenty arpents in depth from the Mississippi river, ascending Rock Branch west quarter south by sixteen arpents front, along the Mississippi, to be taken from the descent of the road into the creek as stated in plaintiffs' petition; that said Spanish government caused the land petitioned for as aforesaid by said Labeaume to be surveyed by one Antonio Soulard, acting surveyor under said government at the time stated in plaintiffs' petition—which said survey does not embrace any portion of the land reserved by Joseph Brazeau in said deed to Labeaume, dated the 9th day of May, 1798.

That the board of commissioners for the adjustment of land titles in the territory of Missouri on the twenty-second day of September, in the year 1810, confirmed to said Joseph Brazeau the said four arpents.

That the said commissioners on the fourteenth day of June, in the year 1811, issued their certificate of confirmation, No. 983, as stated in the plaintiffs' petition. That the said Joseph Brazeau and his

wife, on the twenty-sixth day of June, in the year 1816, by their deed of that date, conveyed all their right, title and interest in said four by four arpents of land to one Pierre Chouteau, which deed was duly recorded as stated in plaintiffs' petition.

That in the month of November, in the year 1817, by authority of the United States, and under the direction of the surveyor-general for the district of Illinois and Missouri, the said four by four arpents of land were surveyed by Joseph C. Brown, of which the following is a copy:

(For map, see the original, page 34.)

No. 982 & 983.

Township, No. 45 north, Range No. 47 E. of 5th Principal Meridian.

Surveyed for Louis Labeaume *two* tracts in one. The one confirmed in his own name for 356 arpents. The other under Joseph Brazeau for 4 arpents, together 360 arpents, equal to 306¼ acres, beginning at the mouth of the branch, the S. E. corner of Easton's tract. Thence down the Mississippi river bending therewith:

S. 24 deg. E. 12 chains.
S. 33 deg. E. 14 chains.
S. 35 deg. E. 13 chains.
S. 27 deg. E. 8 chains.
S. 25 deg. E. 13 chains.
S. 24 deg. E. 15.50; a stone at the mouth of an old ditch, the lower corner on the river.

Thence S. 74½ W. 11 chains, 50 links, intersects the line of the common fields 63 chains, 50 links; a stone the southwest corner of the tract.

Thence N. 15½ W. 10 chains, 20 links, to the branch where the road crosses. Thence meandering down the same:

N. 50 deg. E. 2 chains, 50 links.
N. 25 deg. W. 5 chains, 70 links.
E. 2 deg.
N. 6 deg.
N. 70 deg. E. 3 chains, 70 links.
N. 2 chains, 86 links.
W. 3 chains, 50 links.
N. 25 chains, E. 4 links.
N. 60 E. 1 chain, 50 links.
N. 36 deg. E. 2 chains, 50 links.
N. 80 deg. E. 2 chains, 50 links, the mouth of the branch at the beginning.

(Signed) JOSEPH C. BROWN,
D. S.

November, 1817.

That on the first day of June, in the year 1826, Pierre Chouteau and wife, by their deed of that date, conveyed the said four by four arpents to one George F. Strother; which deed was duly recorded, as stated in the plaintiff's petition. That said George F. Strother and his wife, on the third day of September, in the year 1830, by their deed of that date, conveyed the said four by four arpents of land, with other tracts of land, to John Mullanphy and John O'Fallon, in trust for the sole use and behoof of the Marine Railway Company.

That in the month of November, in the year 1840, the said George F. Strother departed this life, and administration in due form of law was had on his estate, and in like due course of law, all the right, title, interest, and estate of the estate of said Strother in and to said four by four arpents of land were sold by the administratrix of said estate, and conveyed to the plaintiff.

That on the second day of January, in the year 1852, John O'Fallon (the said John Mullanphy having before that departed this life), by authority and direction of said Marine Railway Company, conveyed by deed all the right, title, and interest of said Marine Railway Company to the plaintiff in the land north of the ditch called Labeaume's ditch.

That the said tract of four by four arpents of land which was confirmed to said Joseph Brazeau is situate in the northern part of the present city of St. Louis, in the county of St. Louis, on the south side of an old ditch called and known as Labeaume's south ditch.

That the said Pierre Chouteau, under whom plaintiff claims title to the land in question, on the fifteenth day of October, 1799, petitioned for a tract of land between Roy and Labeaume, of the width of six arpents. That Labeaume's ditches were then made; that Chouteau in his petition called for the line of the land of Louis Labeaume's for his northern boundary; that at this time Joseph Brazeau had promised to convey the four by four arpents to said Pierre Chouteau. That at the time of the survey made in 1803, the south ditch of Labeaume was recognized by all the adjoining proprietors as Labeaume's south line; and that possession was claimed and held with such recognition from the time of said survey in 1803 until about 1823. That all of the defendants respectively claim title and the right to possess the parts and parts which they do respectively possess and claim of said four by four arpents of land, under one Louis Labeaume or his legal representatives; and that the defendants do hold, claim, and possess portions of said tract of four by four arpents in the manner and to the extent stated in the plaintiff's petition. And that the said tract of four by four arpents of land, at the time of the confirmation thereof to said Joseph Brazeau as aforesaid, was not definitively located by the metes and bounds. That on the tenth day of September, 1810, Jacque Clamorgan, who

claimed the Esther grant by deed from her, the 2d September, 1797, conveyed the same grant to said Pierre Chouteau.

And from the evidence aforesaid, the court further finds that said Labeaume, in February, in the year 1806, filed his claim for confirmation before the said board of commissioners for the adjustment of land titles for the territory of Missouri, and said board of commissioners confirmed to him three hundred and fifty-six arpents, and to Joseph Brazeau four arpents, as stated in defendant's answer.

That said Labeaume made the ditches and inclosures mentioned in the defendant's answer. That under the said confirmation to said Labeaume, a survey of the tract of land so confirmed was ordered by the secretary of the department of the interior of the United States government; and in the year 1852 a survey thereof was made under and in pursuance of the instructions of said secretary; and which survey was afterwards approved on the twenty-sixth day of February, in the year 1852; and thereupon a patent certificate was issued by the recorder of land-titles, certifying to the effect that Louis Labeaume or his legal representatives was entitled to a patent under said confirmation and survey for $339\frac{68}{100}$ acres, equal to $399\frac{30}{100}$ arpents. That afterwards, and on the twenty-fifth day of March, in the year 1852, a patent was issued by the government of the United States, granting said tract of land described in the last-mentioned survey to said Labeaume or his legal representatives, and to his or their heirs and assigns; saving and reserving, however, any valid adverse rights which may exist to any part thereof.

That when said last-mentioned survey was made, and also when said patent was issued, as aforesaid, to said Labeaume or his legal representatives, the defendants had knowledge that the plaintiff claimed to be the legal representative of said Joseph Brazeau, under and in virtue of the deeds and conveyances and the documents and proceedings set out in the plaintiff's petition. And that he claimed to have and to hold the equitable title to said four by four arpents reserved by said Brazeau in his said deed to said Labeaume.

The court further finds that there is no evidence that survey No. 3332, for Louis Labeaume or his legal representatives, or the patent thereon, were obtained by any fraud whatever.

That the U. S. survey, No. 3332, for Joseph Brazeau's legal representatives, was made, and a patent was issued thereon, in 1852, as alleged in the answer of the defendants, for the Brazeau reservation, and that said survey and patent do not embrace any land lying north of said south ditch of Labeaume. That the conveyance made by Labeaume and Chambers in 1816, through whom the defendants claim title, was made upon good and valuable consideration, and without any notice of the equities now set up by the plaintiff. That said Louis Labeaume and those claiming under him have had possession of and have used, occupied, and enjoyed, the premises in

controversy from about 1798 to the time of the commencement of this suit.

The court decides, upon the foregoing facts, that the plaintiff is not entitled to the relief sought by his bill, and that said petition should be dismissed at the cost of the plaintiff.

C. B. LORD.

Upon the finding as aforesaid, it is ordered and adjudged by the court that the plaintiff take nothing by this suit in this behalf; but that the defendants go hence without day, and recover of said plaintiff their costs and charges herein expended, and have execution therefor.

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, June 30th, 1858.

Motion and Case for Review filed in this cause.

JOHN MAGWIRE

v.

MARY L. TYLER, William C. Tyler, Mary S. Tyler, Ann E. Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louisa A. Labeaume, John E. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochron, Thomas J. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, Susan P. Christy, George W. Goode, and Francis S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton, and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow, and Mary H., his wife, Theodore P. Greene, and William H. Wright, trustee of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright, and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden, and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shappey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lockland, Orleana Schaumburg, George Case, George T. Hardcastle, and Adalade, his wife.

For which motion and case for review see bill of exceptions.

Clerk.

And afterwards the following proceedings were had in this cause, to wit:

Thursday, July 1st, 1858.

JOHN MAGWIRE
v.
MARY L. TYLER, and others, as previously written.

Now, at this day, the court being fully advised of and concerning the premises of the motion heretofore filed for review, in this cause, doth order and adjudge that said motion be overruled.

And afterwards the following further proceedings were had in this cause, to wit:

Friday, July 2d, 1858.

JOHN MAGWIRE
v.
MARY L. TYLER, and others, hereinbefore named.

Affidavit for appeal filed.

Appeal bond filed.

Bill of Exceptions, "A." A. No. 1.

Bill of exceptions filed (A.) in this cause.

Bill of exceptions filed in this cause.

Appeal to the Supreme Court.

Now, at this day, comes said plaintiff, by his attorney, and files herein his affidavit for an appeal, and, on his motion, an appeal to the Supreme Court is granted him from the decision herein rendered, and thereupon he files herein a bond, as required by the court, in the sum of one thousand dollars, with Charles R. Dickson and John M. Krum, as securities, duly acknowledged by them, which is approved by the court.

Bill of Exceptions, A. A. No. 1.

Which bill of exceptions, "A.," is in the words and figures following, to wit:

Land Court. Bill of exceptions.

JOHN MAGWIRE
v.
MARY L. TYLER et al.

Be it remembered that on the trial of this cause the plaintiff gave in evidence the following writings and documents, viz.:

1. Petition of Esther, dated Oct. 2d, 1793.

Exhibit A. 1. *Petition of Esther, October* 2, 1793.

[Livre Terrien, No. 5.]

To Don Zenon Trudeau, &c., humbly supplicates the undersigned Esther, free mulatto woman, residing in the town of St. Louis, and has the honor to observe to you that she would wish to obtain, in the northern part of this town, a tract of land situate on the borders of the Mississippi river, bounded on the three sides by the domain of his majesty, and on the other by the shores of the Mississippi, the northern part of which present requested grant to be situate between the earth-barn, La Grange de Terre, and the bluffs of the Mississippi, having on each end four arpents, running about from the east, northeast, to the west, southwest, and extending twenty arpents, nearly running from the east, north, northwest, to the south, southeast, so that your memorialist might hold it in fee simple for herself, her heirs and assigns, for the purpose of mowing hay, grazing her cattle, and doing with the same anything else suitable to her interests, and your memorialist will ever pray, &c.

(Signed) ⋈ ESTHER.

St. Louis, October 2d, 1793.

(For map, see original, page 42.)

Exhibit B. 2. *Declaration and Certificate of Trudeau, Lieut. Governor, dated October 3d,* 1793.

We, lieutenant governor, after having ascertained that the land petitioned for belongs to the domain of his majesty, and that it interferes with the claim of nobody, I certify to have put the said Esther, free mulatto woman, in possession of the portion of land designated in her request, having four arpents in front, running about from east, northeast, to west, southwest, on twenty arpents, running about from the north, northwest, to the south, southeast, situate in that portion of this town, between the mound called La Grange de Terre, and the borders of the Mississippi, three sides of which requested land are bounded by the domain of his majesty on the other side—that is, in the part of the east, northeast, is bounded by the bluffs of the Mississippi, as represented by the plat on the back hereof.

In witness whereof, we have given these presents, in the town of Saint Louis, this third day of October, 1793.

ZENON TRUDEAU.

Exhibit C. 3. *Concession to Esther, October 5th,* 1793.

I, Don Zenon Trudeau, lieutenant governor of the western part of Illinois, in consequence of the application of Esther, a free

mulatto woman, residing in this town of St. Louis, made by her request, having date the second instant, and after having put her in possession ourselves, according to the decree of the following, we have granted, and do grant to the said Esther, and her heirs, and assigns, or any other that might represent her rights, the portion of land above mentioned, having four arpents front on its two extremes, which will be nearly running from the east, northeast, to the west, southwest, on twenty arpents, running nearly from the north, northwest, to the south, southeast, situate north of this town; then the northern portion of the present grant will be situated between the mound called La Grange de Terre and the borders of the Mississippi, on going down the said river to the complement and extension of the aforesaid twenty arpents in depth, the north, northwest, south, southeast, and west, south, southwest, which are about the directions of the lines, shall be bounded by the domain of his Majesty, and the side of the east, northeast, which is the side next the river, shall be bounded by its bluffs, so that the said Esther may upon it mow the hay she shall be in want of, graze her cattle, and do with the same whatever use she may think best for her interest, subject, however, to the laws, charges, and impositions which his majesty may think proper to impose hereafter on the same.

Given in the town of St. Louis, of Illinois, the fifth day of October, one thousand seven hundred and ninety-three.

ZENON TRUDEAU.

Exhibit D. 4. *Petition of Joseph Brazeau, June* 1*st*, 1794.

To Mr. Zenon Trudeau, captain of the stationary regiment of Louisiana, lieutenant governor, and commander-in-chief of the western part of Illinois, Joseph Brazeau, a citizen of this post of St. Louis, hereby supplicates, and has the honor to represent that he wishes to obtain in the western part of this town a tract of land, situate beyond the foot of the mound, called the La Grange de Terre, of four arpents in width, which are to extend from the steep bank or beach (ecore) of the Mississippi river, in the west quarter southwest by about twenty arpents in depth, that shall begin at the foot of the hill on which stands the said Grange de Terre, ascending in a northwest course to the environs of Stony creek, so that the said tract hereby asked for be bounded on the east side by the bank of the Mississippi, and on the other sides in part by the king's domain, and in part by lands reunited to said domain, on which lands now lies the present concession, in order that the petitioner may cut hay on it for his cattle, and sow it with grain, and the petitioner shall never cease to be thankful for your goodness.

(Signed) JOSEPH BRAZEAU.

St. Louis, 1st of June, 1794.

Exhibit E. 5. *Declaration and Certificate of Trudeau, Lieut. Governor, dated* 10*th June*, 1794.

We, lieutenant governor and commander-in-chief of the western part of Illinois, after having ascertained that the land asked for belongs to the domain of his majesty, and on account of the abandonment which the ancient owners have made of it, and the other part not having ever been conceded, and that the whole is not prejudicial to anybody, do therefore certify to have put Joseph Brazeau in possession of the parcel of land designated in his petition of four arpents front by twenty arpents deep, which shall extend in a north-northwest course from the foot of the hill where stands the Grange de Terre, ascending to the vicinity of the Rouisseau de Pierre (Stony creek), bounded on one side by the bank of the Mississippi, and the opposite side by the lands not conceded or reunited to his majesty's domain; and at the two ends, bounded on the north, northwest, by the vicinity of Rocky creek, and the other in the south-southeast shall be bounded by the land granted to the free mulattress named Esther; and in order to certify the same, we have delivered these presents to serve, in the town of St. Louis, of Illinois, this tenth of June, of the year 1794.

(Signed) ZENON TRUDEAU.

Exhibit F. 6. *Concession to Joseph Brazeau, June* 25*th*, 1794.

I, Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant-governor, and commander-in-chief of the western division of Illinois, in consequence of the demand made by Joseph Brazeau, residing in this town of St. Louis, in his petition dated the first of this month; and after I had put him in possession, according to the decree I have drawn hereabove, on the tenth of the same month, have conceded, and I do concede, to the said Joseph Brazeau, in fee simple for him, his heirs, assigns, or whoever may represent his rights, the tract of land hereabove designated, of four arpents front by twenty arpents deep, situate north of this town; which [twenty arpents] shall begin beyond the mound called La Grange de Terre, extending north-northwest to the environs of Rocky branch; bounded on one side by the bank of the Mississippi river, and on the opposite side by lands reunited to the king's domain, through which lands passes the present concession, of which one end is to be bounded by the concession of the free mulattress, named Esther; in order that the said Brazeau may cut on it the hay wanted for his cattle, or sow it with grain, said concession remaining liable to all the charges, laws, or impositions, which it shall please his majesty to impose in future.

Given in the town of St. Louis, this twenty-fifth of June, in the year 1794.

(Signed) ZENON TRUDEAU.

Exhibit G. 7. *Deed from Joseph Brazeau to Louis Labeaume. May 9th*, 1798.

The year seventeen hundred and ninety-eight, the ninth of the month of May, before us, Don Zenon Trudeau, lieutenant-governor, commander-in-chief, civil and military, of Upper Louisiana, was present, Joseph Brazeau, inhabitant of this town, who by these presents acknowledges to have sold, ceded, relinquished and transferred to Mr. Louis Labeaume, also inhabitant of this town, a concession of land to him given the twenty-first day of the month of June, of the year 1794, such as the said concession purports to be, and without any warranty; the said Joseph Brazeau not wishir g to be responsible at all for said land, although he has fulfilled the obligations imposed by the laws of the government, in order to acquire the right of domain and of property, yielding and abandoning to said Mr. Labeaume, the purchaser, for him, *his*, or his assigns, all his rights, actions, possessions and property, for the price and sum of forty dollars, which the said Mr. Labeaume has paid him in cash, and for which sum the said Joseph Brazeau gives him a full discharge; the said Mr. Labeaume remaining content and satisfied with the said concession, consisting of four arpents of land, to be taken from the foot of the "elevation or hillock, commonly called the Grange de Terre," by twenty arpents in depth, bounded by the Rouisseau de Pierre (Rocky creek) at the extremity opposite to the said hillock, bounded east by the Mississippi, and west by the land belonging to the royal domain; the said Mr. Brazeau reserving to himself four arpents of land, to be taken at the foot of the hillock, in the southern part of said land, for him (the said Mr. Brazeau) to do as he shall please with them, to sell, cede, or alien, as well for him or assigns; only selling to this effect sixteen arpents in depth to said Mr. Labeaume, who accepts the said sale on the terms and conditions above-mentioned; remaining and accepting, the parties have signed in the presence of Don Zenon Trudeau, lieutenant-governor, and of Messrs. Antoine Dubrail and Gregoire Sarpy, witnesses of assistance.

Done and passed at St. Louis, of Illinois, the day and year above written.

— BRAZEAU,
L. LABEAUME.

GR. SARPY,
ANT. DUBRAIL.

Exhibit H. 8. *Petition of Louis Labeaume. Second Concession.*

To Don Zenon Trudeau, lieutenant-governor, and civil and military commander-in-chief of Upper Louisiana.

Sir,—Louis Labeaume, with all due respect, has the honor to represent to you that he has acquired from Joseph Brazeau, a resident

of this town, a parcel conceded to him on the 20th of the month of June, 1794. This tract having but a very limited depth, and the petitioner having nearly put the whole in cultivation, besides the necessity for him to make establishments for the maintenance (manutention) of the manufactures which he has proposed to you, asks that you be pleased to grant to him 360 arpents of land, including that which the petitioner acquired from Brazeau; that is to say, twenty arpents in depth from the Mississippi, ascending Rocky branch west quarter south, by sixteen arpents front along the Mississippi, to be taken from the descent of the road into the creek, which is the same front of the petitioner's land. The angle made by the perpendicular line, from the road to the river, by the creek and by the river, will about complete the [quantity] of land asked for by the petitioner, who has the honor to observe to you that this land is entirely barren of wood, and can serve but as a pasture, wanted by the petitioner for the maintenance of the cattle he is obliged to keep for his establishment.

(Signed) LOUIS LABEAUME.

Exhibit I. Order of Survey for Louis Labeaume.

St. Louis, 15th of February, 1799.

Whereas, it is evident that the land solicited is totally deprived of timber and wood, is hilly, broken by ravines, and unfit for cultivation, and can serve only for the pasturing of cattle necessary for the use of the mill which is contemplated, I inform the governor-general that the concession asked for will prove useful to the interested as likewise to this town, without being prejudicial to anybody, and considering these circumstances, the surveyor, Don Antoine Soulard, shall put the interested in possession, and make out his survey in continuation, in order to serve to solicit from the governor-general the title in form which he desires.

ZENON TRUDEAU.

Exhibit J. 9. *Survey by Ant. Soulard, dated April 10th, 1799, and Plat and Certificate, and also Certificate by Trudeau of 12th May, 1798, of sale of Brazeau to Labeaume.*

I, Antoine Soulard, surveyor particular of the establishment of Upper Louisiana, do certify, that on the second of March of the current year (in virtue of the foregoing decree from Don Zenon Trudeau, lieutenant-governor of these settlements), I went on the land of Louis Labeaume, to execute the survey of the same, conformably to his petition for three hundred and seventy-four superficial arpents. Said survey was made in presence of the proprietor and of the adjoining neighbors, with the perch of the city of Paris, eighteen feet in length, according to the custom adopted in this province of

Louisiana. This land is situate at three miles in the north of this town of St. Louis, bounded on the north side by the bank of Rocky branch and the domain of his majesty, on the south side by the lands of divers inhabitants, on the east side by the river Mississippi, and on the west side by vacant lands of the royal domain; and in order that all that is above written may be available whenever needed, I give the present certificate with the foregoing figurative plat, on which are designated the dimensions and the natural and artificial boundaries of said land.

In St. Louis, of Illinois, the tenth of April, of the year 1799.

(Signed) ANTOINE SOULARD,
Act. Surveyor Particular.

(For plat, see original, p. 49.)

Exhibit K. Certificate of the Sale by Joseph Brazeau to Louis Labeaume.

I, Don Zenon Trudeau, lieutenant-governor, commander-in-chief, civil and military, of Upper Louisiana, do certify that the above concession, except four arpents, have been sold, ceded, and transferred to Louis Labeaume, by deed proven before us, the ninth of May of this year, and deposited in the archives of this post.

In St. Louis, of Illinois, the twelfth of May, 1798.

(Signed) ZENON TRUDEAU.

Proceedings of the Board of Commissioners for the adjustment of Land Titles in the Territory of Missouri, including the Confirmation to Joseph Brazeau, Sept. 22d, 1810.

10. Claims filed by Louis Labeaume with the Recorder of Land Titles, February 26, 1806.

Abstract from the list of lands claimed by Louis Labeaume, and of which the titles, concessions, plats, scales, and certificates of scales, have been delivered by him to the recorder of land titles, in order that they be registered and recorded by him, according to the Act of Congress, approved on the second day of March, of the year 1805. No. 2. Louis Labeaume, 374 arpents of land, conceded in part to Joseph Brazeau, the 20th of June, 1794, and the other part to Louis Labeaume, the 15th of February, 1799. Settled and cultivated since both these dates.

(Signed) LOUIS LABEAUME.

St. Louis, the 26th of February, 1806.

September 3d, 1806.

The board met agreeably to adjournment. Present, the Hon. John B. C. Lucas and James L. Donaldson, Esq.

The same (Louis Labeaume) claiming 374 arpents of land, situate on the Mississippi, a distance of about two miles from the town of St. Louis, produces a concession, duly registered, from Zenon Trudeau, for four by twenty arpents, dated the 20th of June, 1794, and granted to one Joseph Brazeau; and another concession from said Zenon Trudeau to claimant for the said 374 arpents, including the said four by twenty arpents, dated the 15th of February, 1799. A survey of the same, taken the 20th of March, and certified the 10th of April, 1799, together with a certificate by Zenon Trudeau of the sale of said four by twenty arpents by said Joseph Brazeau, reserving to himself four arpents in superficies; said certificate dated the 12th of May, 1798.

Hyacinth St. Cir, being duly sworn, says that the said Joseph Brazeau [obtained] the said tract of four by twenty arpents, and cultivated the same in the years 1794, 1795, and 1796; and having sold the same to claimant, he did, in the year 1797, put a tenant on the same, who actually cultivated it until the year 1799, when claimant moved on it; that he was then the head of a family, and did prior to and on the first day of October, 1800, actually inhabit and cultivate the same, and has continued on it to this day; the claimant abandoning his right to the aforesaid concession of four by twenty arpents, and claiming immediately under the second, to wit, that for three hundred and seventy four.

The board reject the same, the said concession not being duly registered.

The board adjourned till to-morrow, 9 o'clock A.M.—Book No. 1, pages 515, 517, and 519.

Confirmation to Labeaume and Brazeau.

Friday, September 22d, 1810.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Louis Labeaume, claiming 374 arpents of land. (See Book No. 1, page 517.) The board confirm to Louis Labeaume three hundred and fifty-six arpents, and four arpents to Joseph Brazeau, and order that the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume; and as respects the four arpents, agreeably to a reserve made in a sale from Joseph Brazeau to said Louis Labeaume. Recorded in Book C., page 339, of the recorder's office.

Board adjourned till Wednesday next, at 3 o'clock P.M.

John B. C. Lucas, Clement B. Penrose, Frederick Bates. (See Book No. 4, pages 502, 505, and 508.)

Friday, June 14th, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Louis Labeaume, Book 4, 505; survey at the expense of the United States. Board adjourned.

Cert. 982 and 983. John B. C. Lucas, Frederick Bates, and Clement B. Penrose. (See Book No. 5, pages 183, 184, and 185.)

Exhibit L. (H.) 11. *Certificate called Patent Certificate in favor of Joseph Brazeau.*

Louisiana. Commissioner's Certificate, No. 983, June 14, 1811.

We, the undersigned, commissioners for ascertaining and adjusting the title and claims to lands in the Territory of Louisiana, have decided that Joseph Brazeau, original claimant, is entitled to a patent under the provision of the fourth section of an act of Congress of the United States, "An Act respecting claims to lands in the Territory of Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for four arpents of land, situate in the district of St. Louis, on the Mississippi, and order that the same be surveyed agreeably to a reserve made in a sale of Joseph Brazeau to Louis Labeaume, recorded in Book C., page three hundred and thirty-nine, of the recorder's office, by virtue of a concession, or order of survey, from Zenon Trudeau, lieutenant-governor.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

Exhibit M. 12. *Deed from Joseph Brazeau to Pierre Chouteau, July 26, 1816.*

Whereas, Joseph Brazeau, by deed passed before Don Zenon Trudeau, lieutenant-governor, &c., under date of the 9th day of May 1798, the original of which is deposited in the archives of this county register, No. 2, folio 51 and 52, sold, ceded, and transferred to Louis Labeaume, a concession of land granted to me 21st of June, 1794, which concession consists of four arpents of land, to be taken from the foot of the hill or mound commonly called La Grange de Terre by twenty arpents in depth, bounded by the rocky branch on the extremity opposite the said mound; bounded on the east by the Mississippi, and the west by the land belonging to the domain of the king; reserving to myself four arpents of land, to be taken at the foot of the said mound, in the southern part of the aforesaid tract selling for that purpose only a depth of sixteen arpents to the said Louis Labeaume, who accepts the said deed under the terms and conditions therein mentioned, all of which appears by the aforesaid deed. And whereas, I, the aforesaid Brazeau, made this reservation because I had verbally promised this quantity of land to Pier

Chouteau before the execution of the said deed to the said Louis Labeaume, which said Pierre Chouteau paid me at the time the price agreed upon between us for this piece of land, which I reserved, as heretofore set forth; and wishing and desiring now to fulfil the promise I had made to the said Pierre Chouteau, and to give him title for the aforesaid land by me reserved in the sale passed between the said Louis Labeaume and me herein above mentioned. Therefore know all men to whom these presents shall come, that I, the said Joseph Brazeau, and Therese, my wife, of the county of St. Louis, Territory of Missouri, for the consideration of one dollar, lawful money of the United States, well and truly paid to me by the said Pierre Chouteau, of the same place, as we acknowledge by these presents, and of which sum we hold his heirs or assigns acquitted and discharged, have this day sold, ceded, and quitted, released, abandoned, and transferred to the said Pierre Chouteau, his heirs and assigns, all the rights, titles, claims, possessions, profits, pretensions, and demands which we have and can have to four arpents of land in depth in the south part of said concession at the foot of the aforesaid mound, bounded on the east by the Mississippi, west by lands unknown, being the same which I, the aforesaid Joseph Brazeau, reserved by the said deed made and passed between the said Labeaume and me, above mentioned, and being the remainder of the balance of the said concession of land which we granted to the said Pierre Chouteau.

JOSEPH BRAZEAU.
THERESE BRAZEAU.

Witness, { ZOE LADUC, M. P. LADUC.

Acknowledged before Mary P. Laduc July 26th, 1816. Recorded the same day in Book F., folio 38.

Exhibit N. (*J.*) 13. *Survey by Joseph C. Brown, Nov.* 1817.

Of Confirmation Certificate 982 and 983.

No. 982 and 983.

Township No. 45 north, range No. 47 east, of fifth principal meridian.

Surveyed for Louis Labeaume two tracts in one. The one confirmed in his own name for 356 arpents; the other under Joseph Brazeau for 4 arpents; together 360 arpents, equal to 306¼ acres, beginning at the mouth of the branch, the S. E. corner of Easton's tract; thence down the Mississippi river, bending therewith:

S. 24 deg. E. 12 chains.
S. 33 deg. E. 14 chains.
S. 35 deg. E. 13 chains.

S. 27 deg. E. 8 chains.
S. 25 deg. E. 13 chains.
S. 24 deg. E. 15.50; a stone at the mouth of an old ditch, the lower corner on the river.

Thence S. 74½ W. 11 chains 50 links, intersects the line of the common fields 63 chains 50 links; a stone the southwest corner of the tract.

Thence N. 15½ W. 10 chains 20 links, to the branch where the road crosses. Thence meandering down the same:

N. 50 deg. E. 2 chains 50 links.
N. 25 deg. W. 5 chains 70 links.
E. 2 deg.
N. 6 deg.
N. 70 deg. E. 3 chains 70 links.
N. 2 chains 86 links.
W. 3 chains 50 links.
N. 25 chains E. 4 links.
N. 60 E. 1 chain 50 links.
N. 36 deg. E. 2 chains 60 links.
F. 80 deg. E. 2 chains 50 links the mouth of the branch at the beginning.

(Signed) JOSEPH C. BROWN, D. S.

November, 1817.

SURVEYOR'S OFFICE, ST. LOUIS, September 4th, 1822.

I certify that the foregoing is a true copy of the survey on file in this office.

(Signed) WILLIAM RECTOR,
Surveyor General.

To FREDERICK BATES, ESQ.,
Recorder of Land Titles for the Missouri Territory.

SURVEYOR'S OFFICE, ST. LOUIS, October 24th, 1832.

I certify that the foregoing survey, No. 982 and 983, together with the certificate of William Rector, is recorded in Book C, pages 73 and 74.

To F. R. CONWAY, ESQ.,
Recorder of Land Titles.

(For plat see original, page 54.)

Exhibit O. (*K.*) 14. *Deed from Pierre Chouteau to George F. Strother, June 1st, 1826.*

This indenture, made the first day of June, in the year 1826, between Pierre Chouteau and Bridget his wife, and George F. Strother of the other part, all of the city of St. Louis and State of Missouri:

Witnesseth, that the said Pierre Chouteau and Bridget his wife, in consideration of one thousand dollars, to them in hand paid by the said George F. Strother, before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents doth bargain and sell unto the said George F. Strother, his heirs and assigns, the following tracts or parcels of land, to wit: all that tract or parcel of land granted to the said Pierre Chouteau in October, 1799, by Carlos Dehault Delassus, Spanish commandant, beginning at Roy's line, running north to Labeaume's south line, and extending from the river to the common field-lots west; it being intended hereby to convey to the said George F. Strother, his heirs and assigns, all the land contained within the said concession, except that heretofore sold by the said Pierre Chouteau, according to his said several contracts; to be limited by the metes and bounds limited and fixed by the intention of the said parties at the period of contracting. And one other tract of land, containing four arpents, running on the river, and running back four arpents; making sixteen arpents, lying between the north line of the first-described tract of land and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume; said sixteen arpents being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by Joseph Brazeau to Pierre Chouteau, together with all the houses and appurtenances thereunto annexed. To have and to hold the said several tracts or parcels [pieces] of land, with the tenements, so intended and bargained to be sold, with every part and parcel thereof, with rights and appurtenances, unto the said George F. Strother, his heirs and assigns, forever; and the said Pierre Chouteau and Bridget his wife do hereby warrant the same free from the claim of themselves and their heirs, and all persons claiming under them, except those who now have deeds recorded in the clerk's office of St. Louis, according to the modification of said claims aforesaid described.

In witness whereof, the said Pierre Chouteau and Bridget his wife have hereunto set their hands and affixed their seals, the day and year first above written.

PIERRE CHOUTEAU. [SEAL.]
SANCIE CHOUTEAU. [SEAL.]

Signed, sealed, and delivered
in the presence of
F. P. CHOUTEAU,
C. CHOUTEAU.

Recorded in Book N, page 77.

Exhibit P. (*L.*) 15. *Deed from George F. Strother and wife to John O'Fallon and John Mullanphy, in trust for the St. Louis Marine Railway Company. Sept.* 3, 1830, *Book* 2, 217.

This indenture, made this third day of September, in the year of our Lord one thousand eight hundred and thirty, between George F. Strother and Theodosia his wife, of the first part, and John Mullanphy and John O'Fallon, of the second part, all of this city and county of St. Louis, State of Missouri, witnesseth: That the said parties of the first part, for and in consideration of the sum of eight thousand dollars, to them in hand paid by the said party of the second part, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, and thereof acquit and forever discharge the said party of the second part, as having received the aforesaid sum of eight thousand dollars, in three several notes, bearing even date, herewith, and subscribed by the said party of the second part, in favor of Henry S. Cox, cashier of the Branch Bank of the United States at St. Louis aforesaid, for the use of the United States Treasury; each of said notes, for the sum of two thousand six hundred and sixty-six dollars and sixty-six and two-thirds cents, payable in one, two, and three years, with interest thereon, from the day of the date hereof, at the rate of six per centum per annum, until paid. They, the said party of the first part, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, their heirs and assigns, all their estate, right, title, interest, claim and demand whatsoever, in and to the following tracts, pieces, or parcels of land, to wit: all that tract or parcel of land granted to Pierre Chouteau in October, one thousand seven hundred and ninety-nine, by Carlos Dehault Delassus, Spanish commandant, beginning at Roy's line, running north to Labeaume's south line, and extending from the river to the common field-lots, west, except that heretofore conveyed by the said Pierre Chouteau, according to his several contracts; to be limited and fixed by the intention of the said parties at the period of contracting; and also with a reservation of a parcel of the said land contracted to be sold by the said George F. Strother to Martin Thomas, as surveyed by Rene Paul, as follows, to wit: beginning at an old store on the bank of the river Mississippi, and on the south side of an old ditch; thence along the upper bank of the Mississippi river, south 26 degrees, east 4 chains 86, to a stone for the southeast corner; thence south 75 degrees, W. 3 chains 23 links, a point in the east boundary line of the common field-lots, where is a stone for the S. W. corner, at the foot of and on the north side of a black-oak bush two inches in diameter; thence along said eastern boundary line N. 1 degree 30 W. 4 chains 86, to the southern boundary line of Labeaume's survey, where intersect the same on the east of a sycamore fifteen inches in diameter, the northwest cor-

ner; thence along the said south boundary line of Labeaume's survey, so called, N. 75 degrees E. 11 chains to the beginning corner, containing five acres and ninety-two hundredths of an acre. Also another tract of land, containing four arpents running on the river and four arpents back, making sixteen arpents, lying between the north line of the first above-described tract of land and the southern boundary line of the tract of land sold by Joseph Brazeau to Louis Labeaume, and being part of the same tracts, pieces, and parcels of land, which the said George F. Strother purchased from Pierre Chouteau and Bridget his wife, by deed bearing date the first day of June, one thousand eight hundred and twenty-six, as will more fully and at large appear, reference being had to the record of said deed in the recorder's office of the county aforesaid, in Book N, page 77, together with all and singular the privileges and appurtenances, to have and to hold the aforesaid granted and bargained premises unto the said party of the second part, their heirs and assigns, forever. Together with all and singular the privileges and appurtenances thereunto belonging, or in anywise appertaining, in trust however, for the sole use, benefit, and behoof of and for the St. Louis Marine Railway Company, that the said company may enjoy the same as *his* sole and individual property. And the said party of the second part, trustees as aforesaid, shall hold said property for the sole benefit of the said St. Louis Marine Railroad Company, and shall obey the written instructions of said company in all things relating to the said premises; shall rent, mortgage, sell, or dispose of the same, or any part thereof, for such consideration, to such person, and in such manner as the said company shall direct in writing. And the rents and moneys accruing from any such disposition of said property, or any part thereof, they, the said trustees, shall pay over to said St. Louis Marine Railroad Company, or to their orders; and generally, and in all things, they, the said trustees, and their heirs, shall faithfully, according to the true intent and meaning hereof, discharge the trust herein created; and the said parties of the first part and their heirs shall and will warrant and forever defend the premises aforesaid unto the said party of the second part, their heirs and assigns, against all and every person or persons whatsoever, who may or shall claim through or under them, the said parties of the first part. In testimony whereof, the parties to these presents have hereunto set their hands and seals at St. Louis, on the day, month, and year first written.

GEORGE F. STROTHER, [SEAL.]
J. O'FALLON, [SEAL.]
JOHN MULLANPHY, [SEAL.]
THEODOSIA STROTHER, [SEAL.]

Tests, M. P. LADUC.

Exhibit Q.(M). Letters of Administration on Geo. F. Strother's Estate, dated in 1841, *to Alexander Hamilton.*

State of Missouri, County of St. Louis, *ss.*

Henry Chouteau, Clerk of the County Court within and for the county of St. Louis, in the State of Missouri.

To all to whom these presents shall come, greeting:

Whereas, George F. Strother, late of the county of St. Louis, deceased, died intestate as it is said, and you, Alexander Hamilton, having given sufficient security, I do, therefore, give and grant unto you, the said Alexander Hamilton, in obedience to an order of said court, full power and authority to administer all and singular the goods, chattels, rights and credits of the said deceased, and to demand, collect and in a legal manner require and receive all, and all manner of debt and debts due and owing to the said deceased, and well and faithfully to dispose of the same according to law; and lastly, I do hereby constitute and appoint you, the said Alexander Hamilton, administrator of all and singular the goods, chattels, rights and credits of the deceased.

In testimony whereof, I have hereunto set my hand and official seal, at St. Louis, this sixth day of March, in the year of [SEAL.] our Lord one thousand eight hundred and forty-one, and of the American independence sixty-fifth.

HENRY CHOUTEAU,
Clerk.

State of Missouri, County of St. Louis, *ss.*

I, William F. Ferguson, clerk of the Probate Court of the County of St. Louis, certify that the foregoing is a true copy of the letters of administration granted to Alexander Hamilton on the estate of George F. Strother, deceased, as the same now remains of record in the office of the judge of probate of the county of St. Louis.

In testimony whereof, I hereto set my hand and affix the seal of the Probate Court of the County of St. Louis, at office [SEAL.] in said county, this eleventh day of August, in the year one thousand eight hundred and fifty-five.

WILLIAM F. FERGUSON,
Clerk.

Exhibit R. (N.) 17. *Deed from Alexander Hamilton, Esq., Administrator of the Estate of Geo. F. Strother, deceased, to John Magwire, June 4th,* 1846, *Book A.,* 4, 307.

Whereas, the Probate Court for the County of St. Louis, in the State of Missouri, at the March term thereof—that is to say, on the second day of March, in the year of our Lord one thousand eight

hundred and forty-six—did make an order for the sale of the following real estate therein particularly mentioned and described as belonging to the estate of Geo. F. Strother, deceased, late of the county aforesaid, for the payment of the debts of the deceased; and whereas I, Alexander Hamilton, administrator of the estate of said deceased, did cause the real estate in said order mentioned, to be appraised by Martin Thomas, Joseph S. Hull and John Riggin, three disinterested householders of the county of St. Louis, a certificate of said appraisement to be made by said appraisers, which certificate is on file in the office of the judge of probate of said county, and whereas I, Alexander Hamilton, administrator as aforesaid, having caused the said real estate to be advertised by publication three or four weeks prior thereto in the "New Era," a newspaper printed and published in the city of St. Louis, in said State, and also by ten advertisements put up in public places in the said county twenty days before the said day of sale, I, the said administrator, did, on the fourth day of May, in the year of our Lord one thousand eight hundred and forty-six, at the eastern front door of the court-house of the county of St. Louis, being the time and place mentioned in said advertisement, and between the hours of ten in the forenoon and five in the afternoon of that day, and while the Circuit Court for the County of St. Louis was in session, proceeded to sell the real estate in said order mentioned, to the highest bidder, on the terms in such order mentioned; and, whereas, subsequently to said sale—to wit, on the fourth day of June, in the year 1846—I, the said administrator, did make report to the Probate Court of the county aforesaid, of my proceedings under the order of sale aforesaid, and the said Probate Court having approved and confirmed the report and proceedings of said administrator in that behalf according to the statute in such case made and provided, said report being now on file in the office of the said Probate Court, and John Magwire, of St. Louis, having been the highest and best bidder for the real estate in said order mentioned, and hereinafter described, at and for the price and sum of three hundred and fifteen dollars, and the said purchaser having made full payment of the purchase-money aforesaid. Now, therefore, in order to carry into effect the said sale, by virtue of the statute in such case made and provided, and in consideration of the sum of three hundred and fifteen dollars, full payment of which I do hereby acknowledge to have received from the said John Magwire, I, the said Alexander Hamilton, administrator as aforesaid, do hereby grant, sell and convey unto the said John Magwire, and unto his heirs and assigns forever, all the right, title and interest which the said George F. Strother had in and to the following described real estate at the time of his decease—that is to say, a certain tract of land, situate in the city of St. Louis, containing sixteen arpents, running on the Mississippi river four arpents, and running back four arpents, being a tract or parcel of land which the said George F. Strother acquired

from Pierre Chouteau and wife, by deed dated June 1st, 1826, recorded in the recorder's office of the county of St. Louis, in Book N., page 77, to which deed reference is here made for a more particular description—to have and to hold the same, with all the appurtenances thereunto belonging, unto the said John Magwire, and his heirs and assigns forever. In witness whereof I, the said Alexander Hamilton, as such administrator aforesaid, have hereunto set my hand and seal, the fourth day of June, A.D. 1846.

ALEXANDER HAMILTON,
Administrator, &c.

Exhibit S. (*O.*) 18. *Deed from the St. Louis Marine Railway Company to John Magwire.*

January 2, 1852.

Book C., 6, 492.

Whereas, at a meeting of the stockholders of the St. Louis Marine Railway Company, held at the office of F. M. Haight, on the 31st day of December, in the year of our Lord 1851, in pursuance of a notice of said meeting, duly given, in conformity to an act of General Assembly of the State of Missouri, entitled "An act to repeal the charter of the St. Louis Marine Railway Company," approved on the 15th day of February, in the year of our Lord 1841, the following resolution was unanimously passed:

Resolved, That the land belonging to, or claimed by the St. Louis Marine Railway Company, "north of what is known as Labeaume's ditch, being four arpents in front on the river, and four arpents in depth, and bounded east by the Mississippi river, and south by said ditch of Labeaume, and containing sixteen arpents, be conveyed to John Magwire; and that John O'Fallon, surviving trustee, who holds the legal title to said land, be and he is hereby directed to make said conveyance to said Magwire, and deliver the same."

Now, therefore, this deed, made on the 2d day of January, in the year of our Lord 1852, between the said St. Louis Marine Railway Company, party of the first part, and John O'Fallon, party of the second part, and John Magwire, party of the third part, witnesseth, that the said party of the first part, for and in consideration of one dollar, to the said party of the first part paid in hand, by the party of the third part, and the further consideration expressed in an agreement, bearing even date herewith, doth hereby grant, sell, alien, enfeoff and confirm unto him, the said Magwire, the land belonging to or claimed by the St. Louis Railway Co., in the city of St. Louis, north of the ditch called Labeaume's ditch, and is more fully described hereinafter. And the said party of the second part, for the consideration of one dollar, to him in hand paid by the party of the third part, doth hereby transfer, convey, release and quitclaim unto the said Magwire, the party of the third part, all his right, title and interest in the said land hereinabove described; and doth convey par-

ticularly all his right and estate acquired by deed of George F. Strother and wife, and by deed of the solicitor of the treasury of the United States, to John O'Fallon and John Mullanphy, trustees of the said St. Louis Marine Railway Company, in the said tract of land hereinabove conveyed. To have and to hold the said above conveyed and described piece of land, with all rights, privileges, and appurtenances thereto belonging, unto him the said Magwire, his heirs and assigns, forever. This deed is made, and is hereby declared to be subject to the performance, by said John Magwire, of an agreement with the stockholders of said company, bearing even date herewith. (.) In making this conveyance, the said John O'Fallon does not make any guaranty or incur any responsibility as to the title or otherwise.

In testimony whereof, John O'Fallon, expressly authorized so to do, hath hereunto subscribed his name on behalf of said party of the first part, and hath affixed the seal of the said St. Louis Marine Railway Company; and also, John O'Fallon, surviving trustee, hath hereunto set his hand and seal.

[SEAL.] JOHN O'FALLON,
On behalf of the St. Louis Marine Railway Co., as surviving trustee.

JOHN O'FALLON. [SEAL.]

Exhibit T. 19. *Report of Surveyor.*

In the Circuit Court of the United States.

COUNTY SURVEYOR'S OFFICE, ST. LOUIS, MO., Nov. 22, 1852.

By virtue of an order of the court in this case, that a survey be made of the premises in dispute herein, to me directed and delivered, and in pursuance of due notice given to the parties, I have, since the tenth day of September last, executed said order upon the premises in the following manner, to wit:

I was met on the premises by John Magwire, who appeared for the plaintiff, and B. A. Hill, Esq., who appeared for the defendant. The parties pointed out to me the south line of the survey in the name of Louis Labeaume, and the location of Labeaume's southern ditch, which is the south line of said survey, and in that line the stone recently set by General Milburn as the N. W. corner of survey No. 3332, in the name of Joseph Brazeau, which stone the parties agreed was at a corner of the four arpents reserved by Brazeau in his sale to Labeaume. See Doc. E.

The plaintiff claiming that it was the S. W. corner, and the defendant that it was the N. W. corner, Labeaume's southern ditch being either the north or south line of the said four arpents; the plaintiff claiming that it lay north of the ditch, and requesting me to survey it there—the defendants claiming that it lay south of the

said ditch, in accordance with the survey recently made by General Milburn, under the direction of the surveyor-general—the defendant wanting no survey made except the lot No. 103, in Block No. 321, which lot I have surveyed and correctly represented on the map herewith returned, shaded yellow. At the request of the plaintiff, I have made the following survey:

Beginning at the intersection of the north line of Antoine Roy's survey with the line of curbstone on the east side of Main street, and running thence N. 5 W. along said line of curbstone 22 chains and 50 links; thence N. 9° W. 32 chains and 71 links to the line of Labeaume's survey, to a point 2 chains and 38 links westwardly from the southeast corner of said Labeaume's survey; thence S. 74¾° W. with the line of Labeaume's survey, 9 chains and 53 links, to the corner of Brazeau's survey No. 3332, as before noted, 12 chains and 41 links to the curbstone on the east side of Broadway; thence N. 21½° W. along the line of curbstone so far as that a line drawn parallel to Labeaume's south ditch, when produced, will touch the southern side of Rocky branch, and at a corner of Labeaume's survey by Milburn, as represented on the map, which line I find, by calculation based upon my own measurements (the buildings, &c., preventing my measuring in its true line), to be distant from the said south line of Labeaume's survey 58 chains and 33 links, on a course N. 29° W. I now go to the corner of Labeaume's survey, at the bridge, as represented on the map, and run N. 74¾° E. 15 chains and 43 links, to the bank of the river, the point represented on the map as the N. E. corner of the four by twenty arpents to Joseph Brazeau.

Having established this point, I am enabled to lay down on the map, as I have done, the concession to Joseph Brazeau (see Doc. B.) of four by twenty arpents; and from the survey hereinbefore described, together with the description contained in the certified copies of documents furnished me, I have laid down the claim of Antoine Roy (see Doc. C.), the claim of Esther (see Doc. A.), the claim of Pierre Chouteau (see Doc. D.), and to make the survey of four arpents reserved by Brazeau in his sale to Labeaume (see Doc. E.), as claimed by the plaintiff, which survey I have made at the request of the said plaintiff, as follows:

Beginning at the N. W. of survey No. 3332, situate as before mentioned, I run N. 29° W. 11 chains 66⅔ links, to a point from which the east end of a brick house is 31½ links distant, and the north line of C. Case's dwelling-house is 14½ links distant.

Thence, at 74¾° E. 12 chains, set a stone for corner, from which the S. E. corner of a lath factory, occupied by Summelman & Marine, bears N. 24° E. 153 links distant, and a large black walnut post set for hitching boats bears N. 72° E. 95 links distant.

Thence south 29° E. 11 chains 66⅔ links (four arpents) to a point from which N. E. corner of survey 3332 bears S. 74¾° W., and is

21 links distant; thence S. 74¾° W. 12 chains to the place of beginning, containing 16 arpents of land.

On the east of this survey, and of Brazeau's survey, four by twenty arpents, I have represented two lines—the one making the corner at the south, and identical with those of survey 3332, and the other four arpents distant from the west line of said tract, at right angles therefrom.

I have also taken three lines of levels from the Big mound, or Grange de Terre, which are represented by three lines of profile on the map. From the Big mound, or Grange de Terre, the ground descends to the shaded blue line on the northern part of survey No. 3332, and from that line the ground begins to rise to the north. I have also represented on the map the general course of Rocky branch, together with a portion of the topography of the land near the bridge. I have also surveyed the lots and blocks in the four by four arpents, as represented on the map, together with a portion of Broadway with the cross streets.

N. F. HYER,
County Surveyor.

(For plat, see original, page 65.)

Exhibit Y. 20. *Letter of E. T. Langham, Surveyor-General, to F. R. Conway, Recorder.*

SURVEYOR'S OFFICE, ST. LOUIS, 9th March, 1833.

SIR: A certified copy of the record of a survey, in the name of Louis Labeaume, for 360 arpents of land, which issued from this office on the 24th of October last, at the instance of the present claimant thereof, for the purpose of procuring a patent, and which possesses the required indication of approval by my predecessor, General Rector, has been returned, with the following words, believed to be in your handwriting, indorsed on a paper enveloping the same: "Survey not made in conformity with the confirmation; consequently the patent certificate cannot issue."

I have to request, in case the indorsement on said envelope is yours, that you will make it official by your official signature, and that you will distinctly state all the points in which said survey is at variance, as respects conformity, with the confirmation, in order that I may re-survey the claim, if necessary, and said claimant require it.

The survey and envelope are both inclosed, in order that you may comply with my request in regard to them, if you shall think proper to do so.

I am, sir, very respectfully, your obedient servant,

E. T. LANGHAM.

F. R. CONWAY, Esq.,
Recorder of Land Titles.

Exhibit Z. 21. *Letter of F. R. Conway, Recorder, to E. T. Langham, Surveyor-General.*

RECORDER'S OFFICE, ST. LOUIS, March 23d, 1833.

SIR: Your letter of the 9th instant, in relation to the survey of Louis Labeaume, has been received.

You will herewith receive a copy of a confirmation of the claim of Louis Labeaume and that of Joseph Brazeau, together with a certified translation of the concession to Labeaume, referred to in the confirmation, with a plat and translation of the survey made under said concession, and a translation of a certificate of Zenon Trudeau, lieutenant governor, in relation to the sale from Brazeau to Labeaume; which certificate, you will observe, states that the deed from Brazeau to Labeaume is deposited in the archives of the post of St. Louis, to where I now refer you for a description of the reservation made in said deed, &c.

I see nothing which would warrant the issuing of a patent certificate to the representatives of Labeaume for the land confirmed to Brazeau, but am of opinion that there should be two surveys,—the one of 356 arpents for Labeaume's representatives, and the other of 4 arpents for Brazeau or representatives. The survey of Labeaume is herewith returned.

Very respectfully, sir, your obedient servant,

F. R. CONWAY, [SEAL.]

E. T. LANGHAM, Esq.,
U. S. Surveyor of Public Lands, St. Louis, Mo.

Exhibit A. A. 22. *Survey No.* 2974, *by Brown, June 8th,* 1833, *with the plat.*

Survey No. 2974. Recorded, 23d July, 1836.

Plat and description of a survey of 356 arpents of land, equal to 302 85-100 acres of land, confirmed to Louis Labeaume, in his own right, situate in Township No. 45, north of the base line of Range No. 7, east of the 5th principal meridian. Surveyed under instructions dated "Surveyor's Office, St. Louis, 2d of May, 1833."

Begin at a post set for corner on the bank of the Mississippi river, eastward of the east end of a ditch, dug many years ago, on the south line of this survey, from which post the northeast corner of a stone house bears south 75 degrees 45 minutes west 129 links distant, and a red oak, 10 inches in diameter, bears north 88 degrees west 98 links distant. Thence meander up the west bank of the said river, between high and low water mark, north twenty-three degrees west 17 chains 28 links, to the northeast corner of a steam saw-mill, and in all this course 30 chains 95 links. Thence north

34 degrees west 25 chains. Thence north 20 degrees west 13 chains, to the bank of the Rocky branch, near its mouth. Thence meander up the branch, with the general course thereof [the branch to be, as in the former survey, the boundary between this tract and that of Rufus Easton, under Gabriel Cerre, No. 2042] west 4 chains 15 links. Thence north 54 degrees west 3 chains 40 links. Thence south 15 degrees 15 minutes west 4 chains 30 links, crossing the branch three times in this distance, on this course. Thence south 80 degrees 30 minutes east 2 chains 5 links. Thence south 3 chains 50 links. Thence west 3 chains, crossing the branch twice. Thence south 25 degrees 30 minutes west 3 chains 88 links, crossing the branch once. Thence south 34 degrees east 4 chains, crossing the branch three times. Thence west 3 chains 21 links, to a point in the branch, having crossed the branch once; south 25 degrees east 2 chains. Thence south 45 degrees east 3 chains 33 links, crossing the branch once. Thence south 48 degrees 45 minutes west 3 chains 80 links, to a point at the intersection of the road and the middle of the channel of said branch, which is a corner of said survey, but being in the road and rocky cannot set a post; from said corner a white oak, 6 inches in diameter, bears south 68½ west 57 links distant, and a red oak, 5 inches in diameter, bears south 44 degrees east 98 links distant. Thence south 15 degrees 30 minutes east at 5 chains 24 links intersect the north line of widow Hebat's survey, No. 1847, being the north boundary line of St. Louis common fields, where set a post 44 chains 49 links south 75 degrees 15 minutes east from the corner of a New Madrid location, in the name of John Brooks, being survey No. 2541, from which post a red oak, 3 inches in diameter, bears south 78 degrees 15 minutes west 41 links distant, and red oak, 3 inches in diameter, bears north 12 east 27 links distant, at 10 chains 5 links, which is the whole length of the line, intersect the old ditch, which is in part the northern line of this survey, where set a post for corner, near an old stone found lying on the ground, not set in [probably the old corner stone]; from said post a sycamore, 6 inches in diameter, bears north 85 degrees, east 40 links distant. Thence along said old ditch, being from this corner westward, so far as it goes, the north line of this survey, south 74 degrees 30 minutes west 31 chains 27 links, set post for corner of this survey; from which a red oak, 6 inches in diameter, bears north 72½ degrees east 27 links distant, and a red oak, 5 inches in diameter, bears south 32½ degrees west 35 links distant. Thence south 15 degrees 30 minutes east along a new line, the western boundary of this survey, 46 chains 95 links, set a post for southwest corner, from which a white oak, 5 inches in diameter, bears north 44 degrees east 43 links distant, and a white oak, 5 inches in diameter, bears south 42½ east distant. Thence north 74 degrees 30 minutes east, along the south boundary line of this survey, at 49 chains 28 links, intersect

the east boundary line of the St. Louis common fields, and set a post there in the old ditch, which is a corner to the survey No. 2571, of a New Madrid location of 160 acres, under certificate No. 184, in the name of Henry Peroux, or representatives, under Francis Hamelin; from which corner post a sycamore, 14 inches in diameter, bears south 74 degrees 30 minutes west 5 links distant. Thence continue said line on said course along said ditch to the end of it, and further to the beginning corner of this survey, making this whole south boundary line 60 chains 28 links.

Surveyed on the second and third days of May, 1833.

JOSEPH C. BROWN, D. S.

June 8th, 1833.

SURVEYOR'S OFFICE, ST. LOUIS, 14th December, 1837.

This survey, No. 2974, recorded on pages 114 and 115, is this day approved, as being conformable to the confirmation by the old board of commissioners (certificate No. 982); but in approving the said survey no importance is attached to the words "between high and low water mark." The actual points called for in running to the Mississippi and meandering it are more definite, and the river boundary thus defined is the one approved.

DANIEL DUNKLIN,
Surveyor-General.

22. *Letter from Commissioner of General Land Office to Surveyor-General Conway, dated July 19th, 1841.*

GENERAL LAND OFFICE, July 19th, 1841.

SIR: Herewith I inclose a copy of my letter of this date to the Honorable Jno. J. Crittenden, relative to the claims of

1. Louis Labeaume, for 356 arpents, survey No. 2974, T. 45 N., R. 7 E. Confirmation by the old board, No. 982.

2. Joseph Brazeau, under Joseph Calvin, for a lot in St. Louis, 60 by 180 feet.

You are requested to report to this office, 1st. In reference to the differences between the survey for Labeaume, as exhibited on the township plat in this office, a sketch from which is herewith sent, and the survey, the plat of which has been furnished by your office to the recorder, returning at the same time a diagram to be attached to the township plat in this office, exhibiting the survey for this claim of 356 arpents (No. 982), and that of the survey of four arpents for Joseph Brazeau's claim (No. 983).

2d. In relation to the deviation in the survey for Brazeau from the size of the lot as given in the report, which has been confirmed,

viz., 60 by 180 feet, with copies of any papers in the nature of evidence on which the present survey is based.

Very respectfully, your obedient servant,

E. M. HUNTINGTON,
Commissioner.

Surveyor-General, St. Louis, Mo.

OFFICE OF SURVEYOR-GENERAL, ST. LOUIS, March 4th, 1853.

I certify that the above is a correct copy of a letter from the commissioner of the general Land Office, of the 9th of July, 1841, on file in my office.

D. A. SPALDING,
Surveyor-General.

(For plat, see original, page 68.)

Exhibit BB. 24. *Letter from Commissioner of General Land Office to F. R. Conway, Surveyor General.*

GENERAL LAND OFFICE, July 19th, 1841.

SIR:—I have had the honor to receive from you two patent certificates, and the plates of surveys connected therewith, which you enclosed to me for the following claims, viz.:

First patent certificate No. 1162, and plat for the claim (No. 982) of Louis Labeaume, confirmed by the old Board, for 356 arpents.

Second patent certificate No. 1163, and plat for the claim of Joseph Brazeau, under Joseph Calve, for a lot in St. Louis, designated in the report of February, 1816, thus: 60 by 180 feet, barn lot, town of St. Louis, possession and improvement 20 years ago, granted 60 by 180 feet to be surveyed.

In the first case (that of Labeaume), I find certain differences between the survey according to the *separate* plat, accompanying the certificate, and the township plat in this office, viz.:

By separate plat.	*By township plat in G. L. Office.*
The S. line is 60 82 chains.	The S. line is 63 60 chains.
The W. " 47 31 "	The W. " 47 60 "
The line of that part of the N. boundary, parallel to the S. line, is 31 51 chains,	The line of that part of the N. boundary, parallel to the S. line, is 34 10 chains.
The line running from Rocky Branch S. 15 deg. 30 minutes, is 10 12 chains.	The line running from Rocky Branch S. 15 deg. 30 minutes, is 10 20 chains.

The survey, however, in this case, on the township, appears to

include a claim of Joseph Brazeau, for four arpents. (Confirmation certificate No. 983.)

The surveyor-general should furnish a diagram, exhibiting distinctly and separately the correct and approved survey of each of the claims (982 and 983), as also their connection with the contiguous surveys, in order that the same may be attached to the township plat in this office.

In the *second* case, that of Brazeau, for a lot of 60 by 180 feet, the area of the lot, according to the survey, is much greater than that confirmed:

The North line	being	153	feet	3¼	inches.
" East	"	101	"	5	"
" South	"	179	"	4½	"
" West	"	80	"	3	"

The report, as stated, represents the lots to be 60 by 180 feet. The plat of survey accompanying the certificate, is headed: "Plat and description of a lot, 60 by 180, French measure, as described; but agreeably to the boundary lines called for, said lot is found to be as it is represented by the plat and description; which lot is confirmed to Joseph Brazeau," &c.

I find no authority, with the papers submitted, fo uch a deviation in the survey from the *size* of the lot as given in the report; and therefore the said survey is not recognized as correct by this office.

The above is an extract from fractional township 45 N., range 7 E., 5th principal meridian, as certified by W. McKee, surveyor, Sept. 6th, 1825. E. G.

When an accurate survey is executed for the lot, according to the confirmation, there should be returned with the plat and certificate a diagram, exhibiting the connections with the adjacent blocks, in which lots may be confirmed.

A copy of this letter will be sent to the surveyor-general at St. Louis, from whom a report will be required in relation to these surveys.

The papers, including a letter to you of the 21st ult., from Col. J. O'Fallon, are herewith returned, as that gentleman may desire to retain them until the further action of the surveyor-general.

With great respect, your obedient servant,

(Signed) E. M. HUNTINGTON,
Commissioner.

Hon. JOHN J. CRITTENDEN, present.

Exhibit CC. Report of Surveyor-General Conway, made to the Commissioner of the General Land Office, in compliance with instructions from the Commissioner, on the claims of Labeaume, Brazeau, Chouteau, and Esther, in the upper part of the City.

SURVEYOR-GENERAL'S OFFICE, ST. LOUIS.

SIR: In compliance with the instructions of Commissioner Hunt-

ington, of the 19th July, 1841, to the surveyor-general at St. Louis, which do not appear to have been attended to, and your instructions of the 11th of March last, I now proceed to report on the claims of Labeaume, Chouteau, Brazeau, and Esther, situated in the upper part of this city.

On account of the great value of the lands, the adverse claims thereto, and the amount of litigation that they have already produced, and are still likely to produce, I have been induced, not only to dwell at length on the subject, but also to accompany this report with the evidence which illustrates it, in order that the opinion I am required to give be the better investigated by you for its final decision.

I inclose a full and complete transcript, from the records and papers in the recorder's office, of the following four claims. To each there is attached a translation of such parts as are in the French and Spanish languages.

1st, Letter A.—Of the concession of four by twenty arpents to Joseph Brazeau, which was subsequently merged in a concession of 306 arpents to Louis Labeaume, and the proceedings of the old board under certificates Nos. 982 and 983.

2d, Letter B.—Of the concession of four by twenty arpents to Esther, which was confirmed by the act of the 4th of July, 1836, under decision No. 70 of the late board.

3d, Letter C.—Of the concession to Peter Chouteau of the vacant space between Labeaume's and Roy's tracts, the Spanish survey of 133 arpents, and the confirmation of 93 arpents one perch by the old board, certificate No. 671.

4th, Letter D.—Of the concession to Antoine Roy of eleven arpents and fifty-eight perches, confirmed by the old board, certificate No. 181.

5th, Letter E.—A copy of New Madrid certificate, No. 184 (160 arpents for Henry Peroux, under Francis Hamlin), of its location upon a part of Peter Chouteau's claim, of the survey of the New Madrid land, and of the protest of Peter Chouteau against it.

6th, Letter F.—A certified copy of the deed, dated 9th May, 1798, from Joseph Brazeau to Louis Labeaume, of the sale of his concession of four by twenty arpents, with the reserve of four arpents.

7th, Letter G.—A certified copy of the deed of sale by Esther to Jacque Clamorgan of her concession of four by twenty arpents (see B.), dated the 2d of September, 1794; and a certified copy of the deed of sale of the same land, by Clamorgan to Peter Chouteau, of the 6th of November, 1810.

8th, Letter H.—A copy of the U. S. Survey, Nos. 982 and 983, in a single tract of 360 arpents, including the confirmation of 356 arpents to Louis Labeaume, and of the four arpents to Brazeau, the survey executed in November, 1817.

9th, Letter I.—A copy of survey 2974, of the confirmation of 356 arpents to Labeaume, not including the confirmation to Brazeau, executed in May, 1833, with a document attached thereto.

10th, Letter K.—A copy of the same survey, No. 2974, but showing its connection, made in 1838, with the individual lots of the common fields of St. Louis.

11th, Letter L.—A diagram, showing the original Spanish survey of Labeaume, Chouteau, and Roy, the U. S. survey of Labeaume and Chouteau, the position of the unsurveyed claims of Brazeau and Esther, a part of the New Madrid location under certificate No. 184, and some other data illustrative of this report.

12th, Letter M.—A plat of the U. S. survey of such of the claims in question as are run out, and their connection with the adjacent surveys.

13th, Letter N.—Mr. Bird's letter to you of the 29th of January last, that accompanied your letter to me of the 11th of March last, and which I am required to return.

I will now begin with the investigation of the claims.

Transcript A, Joseph Brazeau and Louis Labeaume.—The concession to Joseph Brazeau, dated the 25th June, 1794, is for twenty arpents, along the Mississippi river, bounded south by the land of the mulattress Esther, and north by the vicinity of the Rocky branch, by four arpents wide to the west.

This land was sold on the 9th of May, 1789, by Brazeau to Labeaume, reserving four by four arpents. Louis Labeaume, in a petition (not dated), asks for 360 arpents, including the land he acquired from Brazeau: that is, twenty arpents west from the Mississippi, by sixteen arpents front along that river; and the complement in that space, between Rocky branch and the Mississippi, which was granted on the 15th of February, 1799, by the lieutenant-governor.

On the 2d of March, 1799, the tract was surveyed by the Spanish surveyor-general, and 374 arpents included therein by Labeaume, and recorded in book , page .

A notice of this claim was filed with the recorder, on the 3d of September, 1806, before the board appointed under the act of the 2d of March, 1805. Louis Labeaume claims 374 arpents, and produces in evidence the concession to Brazeau of four by twenty arpents; his own concession for 374 arpents, including the said four by twenty arpents; the survey of the said 374 arpents, and the certificate by Zenon Trudeau of the sale of the four by twenty arpents, with the exception of the four by four arpents. On the 22d of September, 1810, the board confirmed to Louis Labeaume 356 arpents, and four arpents to Joseph Brazeau, agreeable to the concession to Louis Labeaume, and as respects the four arpents, agreeable to the reserve made in the sale from Joseph Brazeau to Louis Labeaume, recorded in Book C., page 339, of the recorder's office.

From that evidence it is inferred that the Brazeau tract of four

by twenty arpents is included within the survey of the 374 arpents for Labeaume. In his claim before the board, Labeaume states that the concessions for 374 arpents embraces that of four by twenty to Brazeau: he goes farther—he abandons the concession of four by twenty, and claims immediately that for 374 arpents; that is, the land within the bounds of the survey by Soulard. And the board, acting thereon, confirmed 356 arpents to Louis Labeaume and four arpents to Joseph Brazeau, according to the concession to Labeaume, as respects the four arpents, agreeably to the reserve of four arpents, &c.

The deed of sale embracing this reserve (of which document F is a copy, obtained from the clerk of the St. Louis Circuit Court), it will be remarked, is not recorded with the other evidence in the case, but only the certificate by the lieutenant governor of its having been executed; nor was the deed produced in support of the claim before the board. But as the certificate mentions four arpents reserved, the board (in the absence of the original document, or its record), decided that the confirmation thereof should be agreeable to a reserve made in a deed of sale, &c. They did not by this provision settle a question of locality, for this was already done by their including the land in the concession to Labeaume, but they intended to secure to Brazeau the benefit of the clause of his deed, which shows that the reserve consisted of four square arpents, or sixteen superficial arpents, at the south part of the tract of four by twenty.

The Spanish survey of Labeaume is shown on diagram L by the lines *a*, *g*, *hi*, *ik*, *kl*, *la*. The lines *ab*, *bc*, *cd*, *da*, within that survey, purport to represent the original concession to Brazeau of four by twenty arpents; and the lines *ab*, *bc*, *ef*, *fa*, at the south thereof, exhibit the four arpents reserved for Brazeau. The lines from the point *a*, at the south-east corner of Labeaume, is reserved to *b*, the twenty arpents in front, which are the extent to vicinity of the branch. According to the concession, they hardly reach that limit; and to remove further south the south boundary of Brazeau, would still be a greater deviation from the terms of the grant.

Although it is not the object of this report to indulge in suppositions, it may be reasonably believed that, in asking an extension of sixteen arpents to the west of Brazeau's concession, Labeaume intended to avail himself of the sixty-four arpents west of the reserve by Brazeau, shown by the lines *ab*, *bg*, *g*, and = =, on diagram L, and not the space *ki*, *ih*, *hz*, *zk*, on the west of his survey, which latter space would have fallen therein had he taken the line *f e* (the north boundary of the Brazeau reserve) prolonged to, and for his southern boundary. Had he done this, he would have carefully avoided before the board the mention of the fact of the inclusion of Brazeau's land into his own; and the commissioners would not have done him (and chiefly to Brazeau) the injustice of blending the two tracts into one. The concession to Brazeau calls for its southern

boundary the land of Esther—that its south side shall be bounded by the grant to the free mulattress Esther. It also says, "a tract of land situated beyond the foot of the small mound called the Grange de Terre," and also twenty arpents in length, which are to begin from the foot of the hill upon which stands the Grange de Terre; and which means that the land does not begin at the foot of the Grange de Terre, but at the end of the declivity of the hill on which it rests.

By examining the claim of Esther (transcript B.), called, as aforesaid, the southern boundary of the concession to Brazeau, it will be seen that the tract is described by the lieutenant-governor as being situated between the mound called "La Grange de Terre and the banks of the Mississippi," as appears by the plat. The plat here referred to is a part of the concession, so recognized by Mr. Trudeau, and is used by him to establish the position of the land. It shows that this land was situated and granted, as asked for—*i. e.*, between the Grange de Terre and the river, and that about 3½ arpents of it projects farther north from that outside landmark. If the Grange de Terre had bounded that tract on the north, then the tract would not have been between it and the river, but south thereof; and in this supposition the concession could be explained but by a contradiction in terms.

In addition to the foregoing information, I am required by the instructions of the 11th of March to report the case of the omission of the Brazeau survey on the township plat of 1845, and also the proceedings under the former government and ours, in regard to the residue of that claim. The action of the former government in relation to the residue of the Brazeau claim (sold to Labeaume) being fully explained by the document A., it will be necessary now only to comply with the remainder of the instructions.

The omission of the Brazeau claim on the township plat of 1845 is owing to the fact that at that date there was no survey thereof.

Document H., a plat and description of survey Nos. 982 and 983, for 360 arpents in a single tract (or two tracts in one, as says the text), shows that the confirmation of four arpents to Brazeau was run out in 1817, according to the decision of the board, as it was then understood by the surveyor-general.

It appears that a return of these surveys was made on the 24th of October, 1832, to the recorder of land titles, who refused to issue his patent certificate thereon. See the reason therefor, in the copy of the instructions of 2d May, 1833.

To Joseph C. Brown, attached to document I., which is a copy of the plat and description of survey No. 2974, for 356 arpents, the confirmation to Labeaume.

The survey which cut off the four arpents of Brazeau was approved on the 14th of December, 1837, by Surveyor-General Dunklin; document R., shows that this survey, No. 2974, was connected with the

lines of the St. Louis common field lots, and as such approved by Surveyor-General Milburn. A plat and description was subsequently returned to the recorder, and a patent certificate issued by him, No. 1262, which was in part the subject of the commissioner's letter of the 19th of July, 1841, to which these explanations are an answer.

The Brazeau tract seems to have been dormant since it was severed from the collective survey of 1817.

Transcript B.—Esther's Claim of Four by Twenty Arpents.

The northern part of the land called for in this petition is to be situated between the mound called La Grange de Terre and the banks of the Mississippi; and to that petition is attached the plat already referred to, showing the tract and its relative position to the objects called for, in the delivery of possession which follows the petition.

The lieutenant-governor describes the land as lying between the Grange de Terre and the banks of the Mississippi; and, to elucidate his views, he adds—"*as appears by the plat;*" and, in his formal concession, Mr. Trudeau uses the same description.

From document C. and G., it appears that Esther, on the 2d of September, 1794, sold her land to Clamorgan, and that on the 10th of November, 1810, Pierre Chouteau acquired it from Clamorgan; but these deeds have but little bearing on the subject. Its confirmation had been refused by the old board, on the 22d of August, 1806, and on the 17th of February, 1809; but the tract having been recommended for confirmation on the 8th of November, 1833, by the late board, under their decision (No. 70), it was confirmed to Esther, or her legal representatives, by the act of Congress of the 4th of July, 1836. It does not appear that any attempt to survey it was made since the passage of that act, by this office, although applications therefor are on file.

The concession in this case being older than any of the adjoining or interfering grants, it was, as a matter of course, bounded on its southern, northern, and western sides by the king's domain, the east boundary being the bank (ecore) of the Mississippi river, and the width running four arpents westward. These two latter boundaries are settled. It seems that the two others (southern and northern) can be ascertained also from the words of the petition, delivery of possession, and concession. They state that the land is *between* the Grange de Terre and the river—that is, as already mentioned in the observations on the preceding case, that both ends of the land project from the said object, which is thereby separated from the river. The petition and concession state it is in the northern part of the tract, that is, between the Grange de Terre and the river: by which is meant that the projection of the land beyond it is

shorter on the north than on the south side. The plat represents the intended proportion. By dividing the western line of that plat in twenty parts (the number of linier arpents granted), it will be seen (*vide* plat in translation) that from a point opposite the middle of the parallelogram intended for the Grange de Terre, there is a distance of 3½ arpents to the northwestern angle of the tract. Then it is on the northern side that we are likely to find one of the lateral boundaries; and if this be ascertained, the opposite line will easily be found, by running twenty arpents south from the point identified north.

Returning to document A I, we find that in the delivery of possession by Zenon Trudeau, of the twenty by four arpents, asked for in 1794, one year after the grant to Esther by Brazeau; and in his grant the lieutenant-governor first describes the land; and then, to procure more particularly its south boundary, most probably for the purpose of avoiding conflicts, he decrees in one instance that it *shall*, and in the other that it *must*, be bounded by the land of Esther.

If the positive assurance from the evidence in document A., that the concession to Brazeau was subsequently merged into that of Labeaume, is correct, and that Labeaume had his tract of 374 arpents measured out accordingly, that survey shows that Labeaume conformed to the strict orders of the lieutenant-governor in the Brazeau grant, by running his south boundary at the distance of about four arpents from the centre of the mound (see diagram L and M), as indicated on the plat of Esther's land.

As a matter of course, the line so run became the common line to the tracts of Esther and Labeaume: its position cannot be either mistaken or misconstrued.

In his prudence, or for his convenience, Labeaume dug a ditch along it for about the distance of seven arpents westward from the river. The ditch is shown on the survey of 374 arpents; is laid down on the Spanish survey of Peter Chouteau (see document C.); was followed by Mr. Brown, in 1817, in his running survey, Nos. 982 and 983, in a single tract, and was finally used by him as the south boundary of Labeaume for his survey in 1833, and re-survey in 1838, of the confirmation of 356 arpents, under survey No. 2974.

Having thus ascertained the north boundary of Esther's tract by actual surveys on the ground, made by the Spanish and United States authority, in conformity with what I conceive to be the requirements of her concession and that of the subsequent grants adjoining to the north thereof, I have laid down the unsurveyed claim of Esther on diagram L, by beginning at A, the southeast corner of Labeaume; thence along his south boundary four arpents to B; thence (meeting the Grange de Terre at about four arpents) twenty arpents to V; thence four arpents to W; thence along the bank of the river to A;

so that the south boundary runs into the lands of Antoine Roy and John Mullanphy, under Egliz.

It will be perceived by diagram M, of the United States survey, that the distance left by Labeaume between the centre of the Grange de Terre and his south boundary, which, agreeably to the plat of Esther, would be $3\frac{1}{8}$ arpents, was found by actual survey to be $4\frac{1}{2}$ arpents—a slight difference, when all circumstances are duly considered.

Although the north boundary of Esther appears so far to be correctly ascertained, I have been at pains to examine whether there is any data in relation to her south boundary, in the written evidence of the claims to the south thereof, viz.:

The claim of Antoine Roy, of 11 arpents, 58 perches, granted 7th July, 1798; Jacinth Egliz, 12 arpents, 94 perches, granted 22d October, 1799; Emiliana Yosti, 5 arpents, 50 perches, granted 2d September, 1799; Antoine Soulard, 7 arpents, $80\frac{1}{2}$ perches, granted 5th January, 1800; Jacque Clamorgan, 7 arpents, $38\frac{1}{2}$ perches, granted 28th November, 1799.

But I found nothing but what is related in Roy's transcript (letter D) of the protest of Clamorgan against the survey of the concession to Roy; and of the decision of the lieutenant-governor of Clamorgan under Esther, so far as it interfered in giving the preference to Roy. Clamorgan was willing to give one arpent front of his land, by a convenient depth, for the benefit of Roy's mill. That donation, which was no doubt intended to be the south end of Clamorgan's tract, is shown on the plat by the space in Roy's claim, within the letters *g*, *w*, *x*, *y*.

In the proceedings of the late board upon the Esther claim, I have carefully examined the deposition (made in 1833, above forty years after the grant) of Reve Dodier and Baptiste Reviere. Babtiste Reviere dit Baccane.

Dodier says that the fence of Esther's field was running this side (nearest St. Louis) of where now lives Mr. Mullanphy; that is, along the southern line of the tract of John Mullanphy, under Egliz. The vague statement of Reviere, as to the locality of the land, does not much improve the data afforded by other witness; and under these circumstances, Dodier's testimony of Esther's fence running near or along the south line of Egliz, should not, in my opinion, be considered as an evidence of her south boundary, in contradiction of the plainer evidence we have of the northern boundary, which is based upon the action of public officers, whose duty it was to decree, define, and establish it.

Document C.—Pierre Chouteau.

Pierre Chouteau, on the 15th October, 1799, petitioned for a strip of land, which, in consequence of the annulment of the lieutenant-

governor of the pretensions of Jacque Clamorgan thereto, had become vacant, as expressed in manuscript D of the Roy claim. The land asked for was bounded north by the line of Mr. Labeaume; south by the line of Mr. Roy; east by the Mississippi; and was to run west six arpents therefrom. The petition, which does mention that the area of the tract can be determined only by a survey, was acted upon the same day by the lieutenant-governor, who granted the land as asked for; and on the 10th of March, 1803, it was regularly surveyed by Antoine Soulard, as containing 133 arpents. The claim thus surveyed is shown in diagram L by the yellow lines, *ao*, *ap*, *pg*, *gd*. It was presented to the board of commissioners on the 25th January, 1809. The evidence produced was the petition, concession, and survey, already mentioned. Claimant renounced all claim to 39 arpents, 99 perches, which interfered with the land heretofore surveyed, leaving the quantity claimed 93 arpents, 1 perch.

On the 17th February, 1809, the board confirmed to Pierre Chouteau 93 arpents and 1 perch, and ordered that the same be surveyed, so as not to interfere with the field lots of the little prairie, adjoining the town of St. Louis; and in their certificate No. 671, issued on the 29th May, 1811, the commissioners, to the words above identified, add the explanation, by virtue of a concession or order of survey from Don Carlos Delassus.

The part abandoned by Mr. Chouteau of his original concession, as interfering with the field lot of St. Louis, is shown on diagram L, by the triangle *os*, *sr*, *ro*. The tract was surveyed by the United States on the 2d of April, 1817, under No. 671, as containing 93 arpents, 1 perch (see lines *gp*, *ps*, *st*, *zu*, *ug*, on diagram L), and on the 4th November, 1822, the return of it was made to the recorder, who, as it appears from the registry in his office, issued thereon patent certificate No. —. The survey thus made of this confirmation, does, as required, not interfere with the eastern part of the common field lots, but it has not been extended to the southern line of Labeaume; this left the space *a*, *r*, *rt*, *tu*, *ua*, vacant, or rather open for the introduction of new claims, inasmuch as that of Esther was then reconfirmed. Although the land covered by it was reserved from sale or any other disposition, by the United States, by the act of the 15th January and 3d March, 1811, and 17th February, 1813. It will be seen by document E., that in consequence of the curtailment of the Spanish survey of Chouteau, a location was, on the 7th April, 1817 (five days after the United States survey of Chouteau), made upon the space left vacant thereby, under certificate No. 184, issued for 160 acres, to legal representatives of Henry Peroux, under Francis Hamelin, in lieu of an injured lot of one arpent, in the town of New Madrid, in pursuance of the New Madrid act of the 17th February, 1815. The survey No. 2571, of this location, was made in March, 1822, five years after the location, and the return issued to the register in January, 1824, two years after the survey, not-

withstanding the protest of Peter Chouteau, of the 24th June, 1818, against that location, on file here, with the papers in Peroux's case, and a copy of which is in document E. Before the board, Chouteau, the claimant, renounced all claim to 39 arpents and 99 perches, which interfered with the land heretofore surveyed, leaving the quantity at present claimed 93 arpents and 1 perch. Mr. Chouteau states, in his protest, "it is not for me to account for the phrase or mode of entry adopted by the board, in recording this abandonment —the act is theirs and not mine." He declares that, before the commissioners, he did abandon only so much of his claim "as might be found to interfere with the front of the field lots,"—that the object of the abandonment was to avoid a contest with any of the holders of field lots to the west of his tract; and so goes on with observations worthy of careful perusal and attention. The confirmation and the certificate of the board make this restriction alone the interference of the field lots, because there was no room or necessity for any other. The words "land heretofore surveyed," can point only to the surveys of those field lots made by Martin Duralde, in 1770 or '71 and '72, under the authority of the Spanish governor, and recorded in Livre Terrien No. 2.

They cannot refer to the land claimed by Esther, because the commissioners, in confirming to Chouteau, had just decided against her claim, which decision was indeed the cause of Chouteau's confirmation.

Besides, there was, in fact, no survey of Esther's land; for if the plat in her petition was sufficient to illustrate its position, and was used for that purpose, still it does not bear the character of the plat of a regular survey, executed by the surveyor-general, or his deputies, subsequently to the grant upon the order of the lieutenant-governor. Those words cannot allude to the surveys of Roy and Labeaume, these being the very boundaries of Chouteau; nor can they relate to the surveys of concessions not recorded, because the only jurisdiction of the board upon claims of this nature was their rejection. How the forty arpents (38.99) were cut off from the Spanish survey, the proceedings of the commissioners do not show. The section, it seems, was not made by the surveyor in their employ, in consequence of their order to that effect; nor do the plats of that surveyor (Silas Bent), in this and the recorder's office, leave any vestige of the transaction.

The surveys referred to of the field lots are not platted in Livre Terrien; they describe the lots merely. There was, in 1809, when the board acted on Chouteau's claim, as far as I can learn, no connecting plat of the outlines of the common fields of St. Louis; and the Spanish plat of Chouteau, not calling for or showing its east line, it follows that the relative position of this line with the western line of Chouteau was not then ascertained. This led to the belief that either the calculation by which the forty arpents here cut off was

erroneous, or it was then supposed that the eastern front line of the common fields run further east than whence the United States survey of 1818 established and fixed it.

The area of the Spanish survey (133 arpents) is not understood; or, rather, the tract does not contain an area above that quantity. The length of the western line is 18¾ arpents; that of the southern is 6; and that of the northern is 7 arpents. By allowing a continuous width of seven arpents to compensate for the outside curve of the river, the contents would be 131½ arpents. To ascertain the fact, an accurate calculation of the land embraced in the Spanish survey has been made, and it produced the following results: Survey No. 671 contains 79.12 arpents; that part thereof between it and Labeaume (N. Madrid location), 14.10; and the triangle *o s r* of diagram L, abandoned to the field lots, 18.24; total, 111.46; which is equal to 131½ arpents. Then, as there is more land in the Spanish survey than is written on its face, the question, it seems, is, whether the confirmation to Chouteau is to be governed by the words used by the commissioners—93 arpents 1 perch—to be surveyed so as not to interfere with the common field lots of the Little Prairie of St. Louis, or by the calls of the concession between Roy's and Labeaume's land, with the exclusion of the interference in question. In the first hypothesis, out of 131 arpents (the actual quantity), Chouteau gets 93 arpents; 21½ arpents (18.24 arpents) are interfered with by the field lots, and there remains 16½ arpents which are neither interfered with by these lots nor by other lands "heretofore surveyed," or included in the survey of Chouteau. If this curtailment of 16½ arpents be made on the south or on the north of the Spanish survey, the confirmation in this case does not agree with the calls of the concession, by virtue of which it was made, and deprives it of one of the intended boundaries; besides, what is to be done in order that the 16½ arpents may become interfered with by lands heretofore surveyed, if they are taken from Chouteau's survey?

In the second supposition, to wit, that the calls of the concession should control the survey, regardless of the specific quantities confirmed and deducted, then the 131 arpents are to be thus divided: Chouteau will receive 109½ arpents (the 79.12 acres in the survey No. 671, and the 14.10 acres in the New Madrid location), and abandoned to the common fields 21½ arpents (18.24 acres in the triangle *d s r*). This would satisfy the claim under all its aspects. It would not interfere with land heretofore surveyed, as said in the abandonment; it would not interfere with the field lots of the Little Prairie, as required in the confirmation, and its survey would preserve the integrity of the calls of the concession, under which the confirmation was based, as set forth in the commissioner's certificate. Also, this would remedy the error caused by a random estimation of the quantity of interference, and moreover be in accordance with the principle, that the survey of a private claim should be extended to

the natural objects called for in the concession, regardless of the specified quality; where this proceeding, as in the case now investigated, might be adopted without injury to the adjoining valid claims.

I will suppose that, in this same case of Chouteau, that had the interference with the field lots been stated below its actual amount, instead of being actually above it, would this inverse error have given him the right to transcend the lines of either Roy or Labeaume, and make good the deficiency from their land? I think not. And if so, is he not entitled to the benefit of the principle in the contrary event? And here I beg a reference to the instructions of the 7th of July, 1845, from the commissioner of the General Land Office to the surveyor-general, to show how the principle just set forth was respected in relation to the claims of Soulard (survey No. 1333), although under circumstances less formidable than in this case.

In conclusion, I will remark that if it be said that the commissioners disregarded Chouteau's survey, and the proof of this be deduced from the omission of the notice of it in the confirmation, in return it may be asked, "Why did they use it in the deduction of the interference with the lots?" and also that this confirmation was barely 93 arpents, without reference either to survey or concession, why did they state, in their certificate of that confirmation, that it was "by virtue of a concession, or order of survey, from Don Carlos Dehault Delassus?"

As the tract of Roy, south of Chouteau, cannot be affected by the decision sought for on the claims which are the subject of this report, any further notice of it is unnecessary, except to state that the transcript thereof (lettered D) is transmitted for the purpose only of showing the relation which its evidence bears on the claims of Chouteau and Esther.

Inasmuch as this office is already furnished with general instructions as respects the actions of the surveyor-general upon New Madrid certificates located on French or Spanish grants, I deem it needless to notice further than already done, the location of Peroux under Hamelin.

As the question of location in the Esther claim, upon which I am requested by the instructions of the 11th of March to give my decision, involves also the location of the claims of Brazeau, Labeaume, and Chouteau, I will now, from the written evidence and the foregoing observations, present my views upon the four cases under consideration.

1st. Joseph Brazeau.—I think that the reserve of four arpents square, made by him in his deed to Labeaume of May 9th, 1798, and confirmed by the board, should be surveyed on the southeast part of the survey of Labeaume, within the space embraced by the lines *ab*, *be*, *ef*, *fa*.

2d. Louis Labeaume.—This confirmation of 356 arpents should

be surveyed so as to follow the north and western lines of the survey to be made for Brazeau, and thence the lines of the present survey No. 2974, with the exception that its western boundary, the lines *m*, *n*, should be removed to the west, so as to take in the 16 arpents reserved for Brazeau.

3d. It is my opinion that the claim of Esther should be surveyed within the lines *ab*, *bv*, *bw*, and *wa*.

4th. I think that the present survey, No. 671 of Chouteau, should embrace the space within the lines *ar*, *rs*, *sp*, *pg*, *gd*, so as to be bounded north by Brazeau or Labeaume, as the case may be, and south by Roy, agreeable to his concession.

I have now endeavored to fulfil the duty required from me. I have dwelt at length upon the subject, because of the great value of the lands in question, and of the bitter litigation that, for the last twenty years, the conflicting claims of adverse parties thereto have already produced, and will doubtless still produce. I have gathered all the evidence (as far as it is known) which the united offices of the surveyor-general and the recorder of land titles afford on the subject; and in the county court office, the evidence wanting (but referred to) in the transcript of Brazeau's claim, which was necessary to ascertain the amount and locality of his reserved land. And in setting forth my opinion on the subject, I have sought to be guided only by that evidence, regardless of the conflicting interest of the adverse parties.

In dismissing the subject, I respectfully request in their behalf your early attention thereto; and also such special instructions, if necessary, to this office, when it is apprised of your decision, as will enable the surveyor-general to carry it into effect.

F. R. CONWAY.

St. Louis, June 16th, 1847.

[For plat, see original, page 84.]

Exhibit EE. Survey No. 3333, by Milburn.

The foregoing plat, and the following description, correctly describe and represent the survey executed by me in the months of August, September, October, and November, 1851, and January, 1852, under instructions of M. L. Clark, Esq., surveyor-general of the United States for the States of Illinois and Missouri, dated 22d of August, 1851, authorizing and appointing me to survey and connect with the lines of the adjoining surveys of private claims a tract of 374 arpents of land for Louis Labeaume, according to the survey for said Louis Labeaume, executed by Antoine Soulard, Spanish surveyor-general of Upper Louisiana, on the 2d of March, 1799, as containing the aforesaid quantity of 374 arpents of land, in conformity with, and in virtue of, the decree of Lieutenant-Governor

Trudeau, of the 15th of February, 1799, and ordered to be surveyed by the commissioner of the General Land Office, on the 29th of July, 1851, according to Soulard's aforenamed survey, and in conformity with the decision of the secretary of the department of the interior, of the 25th of July, 1851.

Begin on the bank of the Mississippi river, between high and low water mark, and on the extension eastward of the line of Labeaume's southern ditch, where set a stake from which the northeast corner of the ruins of a stone house, built by the late Martin Thomas, Esq., for a distillery, and bears S. 57¾ W. 129 links distant: set a stake at this beginning, which is the place of Brown's old corner.

THENCE S. 74½° W. with the southern boundary line of the survey as established by Antoine Soulard, and with the line of Labeaume's southern ditch,

Chains.		
0	80	the top of the high bank of the Mississippi river,
4	23	a set stone at S. E. corner of an inclosure,
8	56	a set stone at S. W. corner of said inclosure,
9	72	a set stone at S. E. corner of another inclosure,
11	00	a set stone at the intersection of the east boundary of the Saint Louis common field, 233⅓ links northward of the S. E. corner of survey No. 1410,
11	76⅓	the N. W. corner-stone of the survey of 16 arpents of land executed by me for Joseph Brazeau, in December, 1851, under the before-named instructions and decision.
14	76	Intersect the eastern edge stones of Broadway McAdamizing (for connection run S. 13° E. 208 links to the north side of Labeaume street 42 links westward of the northeast corner of Labeaume street and Broadway; and N. 20¾ W. 420 links to the north side of Webster street 35 links westward of the N. E. corner of Webster street and Broadway).
14	94½	The centre line of Broadway.
14	13	The edge stones on the western side of Broadway McAdamizing.
15	47	Line between surveys 1410 and 1484, 450 links west of corner on E. boundary of common field.
22	50	Ascending the hill here, there is no further appearance of the old ditch; this is about the place of the S. W. angle thereof.
22	97	Intersect a lot occupied by Mr. Aldrich, the N. E. corner—— links northward of the S. E. corner of brick house and——— links northward of S. E. corner of lot on Labeaume street.
25	85	The west edge of a set stone on the east side of 10th street.
27	22	The east edge of a stone on the west side of 10th street.
28	45	The east edge of a set stone.
30	59½	The east edge of a set stone.
32	68	A large set stone at the intersection with the line between surveys 1484 and 1483, 21 chains and 64 links northwest-

Chains. ward of the corner of said surveys No. 1484 and 1483 on the eastern boundary of the St. Louis common field.

38 56 Intersect the south line of survey No. 1483 at the N. W. corner of a school lot, survey 379; 27 chains and 56 links northwestward from the corner of said surveys 1483 and 379 on the eastern boundary line of the St. Louis common field; this intersection is in the garden of Major Edwards Dobyns, and near his house. I do not, therefore, set a stone, but perpetuate the place of said intersection by the course and distance to a corner of his house, viz., the southwestern corner of the main part of the house bears S. 77° E. 123 links distant.

40 10 Leave Major Dobyns' garden.

40 18½ A small set stone (— with the line).

40 48 A large set stone (— with the line).

41 42 A large set stone (1 across the line).

42 62 A small set stone (— with the line).

43 10 A long pond 50 links over (E. W.).

44 20 A large set stone (— with the N. line) at the intersection with the northern line of survey No. 1482 at the S. W. corner of survey No. 379, 33 chains and 27 links northwestward from the corner thereof on the east boundary of the St. Louis common field.

46 35 A large set stone (1 across the line).

47 24½ A large set stone (1 across the line).

49 96 A large set stone (— with the line) at the intersection of the line between surveys 1482 and 1481, 39.14 chains northwestward from the corner of said surveys on the east boundary of the St. Louis common fields.

51 32 A large set stone (— with the line).

52 18 A large set stone (1 across the direction of the line) is 7 links to the left.

55 38 A small set stone (1 across the direction of the line) is 7 links to the left.

55 74 Set a limestone, 15 inches long, 10 inches wide, and 4 inches thick, at the intersection with the line between surveys 1481 and 1480, from which the old white oak witness tree, now 8 inches diameter, bears N. 40 E. 15 links distant (the other old witness tree has gone), and a red oak, 8 inches diameter, bears N. 59½ W. 10 links distant; this intersection is 45.04 chains northwestward from the corner of said surveys No. 1481 and 1480 on the eastern boundary of the St. Louis common field.

60 83½ Intersect Tyler's western fence 10 links northward of the S. W. corner of his inclosure.

61 48 Intersect the line between surveys 1480 and 1479, 50.89 chains northwestward from the corner thereof on the east

Chains. boundary of the St. Louis common field; set a lime stone, 14 inches long, 8 inches wide, and 3 inches thick, from which the centre of the northern opening of the culvert across Mullanphy street bears S. 13½ E. 52 links distant.

63 08 Cross the water-pipe in Mullanphy street.

64 33 Cross the water pipe in 17th street.

64 72 Intersect James Clemens' fence on the west side of 17th street, 39 links S. 15° W. from the northern corner of his lot.

67 02 Intersect the line between surveys 1479 and 734, 56.74 chains northwestward from the corner thereof on the east boundary of the St. Louis common field.

23 00 Arpents the distance called for in the old Spanish survey equal to

67 08⅓ chains, set a lime stone 30 inches long, 12 inches wide and 10 inches thick, for the southwestern corner of this survey in James Clemens' inclosure.

Thence N. 15½° W. with the western boundary line of this survey.

0 03½ Intersect the line between surveys 734 and 1479, 62.43 chains S. 75¼° E. from the corner of said surveys on the western boundary of the St. Louis common field.

1 17 Intersect the northwestern boundary line of the city of St. Louis, 51.53 chains S. 22° W. from a stone on said city boundary line inside this survey, which stone is 186.33 chains N. 22 E. from the angle of the city boundary line on the north side of Chouteau avenue.

1 83½ Intersect James Clemens' fence on the south side of Mullanphy street 295 links N. 75° W. from the corner of his inclosure to the S. W. corner of Mullanphy and 17th streets.

3 40 Intersects the line between surveys 1479 and 1480, 61.71 chains S. 75¼° E. from the corner of said surveys on the western boundary of the St. Louis common field, set a stone 15 inches square and 3 inches thick.

6 77 Intersect the line between surveys 1480 and 1481 (60.97 chains S. 75° E. from the corner thereof on the western boundary of the St. Louis common field), in a pond, 150 links over; I cannot, therefore, set a stone at said intersection.

10 18 Intersect the line between surveys 1482 and 1481, 60.07 chains S. 75¼° E. from the corner thereof on the western boundary of the St. Louis common field, set a lime stone 18 inches long, 12 inches wide and 4 inches thick.

13 61 Intersect the line between surveys No. 1482 and 380, at Hanfield's southern fence 15¾ links eastward of his S. W. corner and 59.01 chains S. 75¼ E. from the corner of said surveys 1482 and 380 on the western boundary of the St. Louis common field, at said intersection set a lime stone 15 inches long, 12 inches wide and 5 inches thick.

Chains.

16 98 Set a lime stone 12 inches square and 6 inches thick on the line between surveys 380 and 1483, 58.29 chains S. 75¼° E. from the corner of said surveys on the western boundary of the St. Louis common field.

20 38 Intersect the line between surveys 1483 and 1484, set a triangular lime stone 14 inches at the base, 16 inches on the two sides and 8 inches thick, with large end down, 57.41 chains S. 75¼ E. from the corner of said surveys on the western boundary of the St. Louis common field, and 39.98 chains N. 75¼° W. from the intersection of this line between surveys 1483 and 1484 by the southern boundary of this survey.

22 12 Intersect the eastern jamb of the main front door entrance to George Emerich's brick house, 26 links westward of the S.E. corner of said house.

30 49 Intersect the line between surveys 1484 and 1410, 54.44 chains S. 75¼° E. from the corner of said surveys on the western boundary of the St. Louis common field, at said intersection set a lime stone, 14 inches long, 10 inches wide, and 8 inches thick.

37 23 Intersect the line between surveys 1410 and 1485 on the slope of a large sink-hole facing eastward, and 52.68 chains S. 75¼ E. from the corner of said surveys on the western boundary of the St. Louis common field, at said intersection set a lime-stone 18 inches long, 10 inches wide and 6 inches thick.

16 00 Arpents, the distance called for in the old Spanish survey equal to

46 66⅔ chains, should be the place of the corner according to Soulard's plat, but this falls short of the northern boundary prolonged S. 74½ W. in continuation of the old ditch, which marks the former position of the said northern boundary lines; I, therefore, proceed, and at

47 28 chains intersect the said prolongation of the line of said old ditch, where set a lime stone 40 inches long, 12 inches wide, and 8 inches thick, with the smallest end 14 inches above the natural surface of the ground, for the northwest corner of the survey.

Thence N. 74½ E. with the northern boundary line of this survey.

1 97 a large old set stone, the S. W. corner of survey No. 3209 of Gabriel Cerre.

5 89 Intersect the line between surveys 1485 and 3306, 57.00 chains S. 75¼ E. from the corner of said surveys on the western boundary of the common field.

6 23 The place of the northwest corner of survey 2974 of 356

Chains. arpents executed by Joseph C. Brown, in 1833, for Louis Labeaume.

23 17 Intersect the line between surveys Nos. 3306 and 2974, at an old set stone, 74.03 chains S. 75¼ E. from the corner of said surveys on the western boundary of the St. Louis common field.

27 12 A set stone at the intersection of the centre of a street called Wright street, with the east side of 12th, formerly 7th street, at the angle thereof.

29 04 A set stone.

29 50 A set stone.

32 91 A set stone on the west side of 11th, formerly 6th street.

32 91 A set stone on the east side of said 11th, formerly 6th street.

34 36 The east side of the old road in descending the hill; about here is the N. W. angle of Labeaume's ditch. Then the line runs along the north edge of the northern ditch.

35 34 Intersect the line between surveys 1486 and 1487, 90 chains S. 75¼ E. from the corner of said surveys on the west boundary of the St. Louis common field; at this intersection set a lime stone 20 inches long, 8 inches wide, and 4 inches thick, from which a sycamore 24 inches in diameter bears S. 74¼ S. 2½ links distant.

35 72 Intersects the northwestern boundary line of the city of St. Louis, 6.72 chains N. 22 E. from a set stone on said city boundary line and on the hill, which said stone on the hill is 186.33 chains N. 22 E. from the angle in the city line on the north side of Chouteau avenue, set a stone at this intersection.

37 86 The place of the old corner-stone established by Soulard on the north side of the old ditch, and found by Joseph C. Brown in November, 1817, in executing a survey Nos. 982 and 983, of 360 arpents, in the names of Louis Labeaume and Joseph Brazeau: and also afterwards in May, 1833, whilst executing a survey of 356 arpents, numbered 2974, in the name of Louis Labeaume, and then perpetuated by taking the course and distance to a sycamore tree, which I find standing and in good preservation with Mr. Brown's marks thereon; the main upright stem of said sycamore tree is now 24 inches in diameter, and it bears (as reported by Mr. Brown), N. 85 E. 40 links distant; I set a limestone at this corner, 40 inches long, 10 inches wide, and 4 inches thick, 30 inches in the ground; the distance called for in the old Spanish survey of this line is 13 arpents 6 poles, equal to 39.66⅔ chains; but I find the place of the old stone 180⅔ chains short of this distance (1.75 chains being equal to 6 poles, so that the line may be said to be only 13 arpents, as

Chains.

my measure makes it only $5\frac{2}{3}$ links short of that.) Thence N. $13\frac{1}{2}$ W.

0 77 A set stone on the south side of a street, is $2\frac{2}{3}$ links to the left.

1 69 A set stone on the north side of said street, is 6 links to the left.

2 94 Intersect the northwest boundary of the city of St. Louis, 10.44 chains N. 22 E. from a set stone on the hill on said city line, which said stone on the hill is 186.33 chains N. 22 E. from the angle of the city line at the north side of Chouteau avenue, set a stone at this intersection.

4 71 Intersect the north boundary of survey 1487 and which is also the north boundary of the St. Louis common field, 94 13 chains S. $75\frac{1}{4}$ E. from the N. W. corner of the St. Louis common field, and $19\frac{2}{3}$ links S. $75\frac{1}{2}$ E. from the stone on said line at its intersection by the line of Mr. Brown, run N. $15\frac{1}{2}$ W.; set a limestone 12 inches long, 4 inches wide, and three inches thick, at this intersection.

5 35 A set stone 18 links to the left.

6 88 The west side of the N. W. prong of a double black oak, this N. W. prong is 15 inches in diameter.

3 00 Arpents 6 poles at the distance called for in the old Spanish survey, equal to

10 15 Chains, intersect the old bed of the Rocky branch, where being on the rocky bottom, I cannot set a stone; the N. W. corner of the southern abutment of the arch of the bridge across the Rocky branch on the Belle Fontaine road, bears N. 9 E. 10 links distant, from which corner of the abutment, Brown's corner on the Rocky branch of survey No. 2974, as executed in 1833, bear S. 26° 50′ W. 63 links distant, and from this corner of my survey in the old bed of the Rocky branch, I run to show the track of the old road S. 22 W. 3.06 chains centre of the old road at the foot of the hill; thence S. 1 W. with the centre of the old road ascending the hill 290 chains, brow of the hill 8.30 chains, intersect the north boundary line of my survey 1 chain and 31 links S. $74\frac{1}{2}$ W. from the intersection with the line between surveys No. 1486 and 1487: return to the corner in the old bed of the Rocky branch at 10.50 chains on the line run N. $13\frac{1}{2}$ W., and run thence down with the meanders of the Rocky branch as near as practicable with the centre of the old bed thereof, as indicated by present appearances, and from the best knowledge I could obtain by diligent inquiry of those most able to give correct information respecting the recent changes which have been made; I have also referred to the old deeds and plats of the owners on opposite sides of the branch N. $72\frac{1}{2}$ E.

Chains.

0 04 Intersect the western side of the bridge across the Rocky branch on the Bellefontaine road, 9 links S. 14½ E. from the inside of the southern abutment.

0 44 Intersect the eastern side of said bridge 5 links S. 14½ E. from the inside of the southern abutment.

1 53 Set a stake in old bed of the branch, and on the right bank of the present bed of the branch.
Thence N. 42½ E.

1 05 Set a limestone, 16 inches long, 8 inches wide, and 6 inches thick, marked z on the top, in the former bed of creek, on a hillock made for turning the water from the stone wall, which is 10½ links N. 42½ E. from said stone; from this stone an elm, 30 inches in diameter, at the foot of the aforesaid stone wall, and the southern edge of a well both bear N. 2 E., the well 11 links and the elm 69 links distant, and another elm, 10 inches in diameter, bears N. 40 W. 37½ links distant.
Thence N 3½ E.

1 32 A point on the west side of a curve in the stone wall, from which the centre of the north end of the straight part of the said wall bears S. 2 E. 60 links distant, and 113 links further, on the same course (S. 2 E.) to the south end of the said stone wall.
Thence N. 24½ W.

0 80 A point in the water of the branch 4 links to the westward from the northern end of the aforesaid stone wall.
Thence N. 55 W. with the branch.

0 80 Passed on the western side of an elm, 24 inches in diameter, standing on the right bank of the branch.

1 60 A point on the left edge of the water of the branch.
Thence N. 47¼ W.

1 59 A point in the middle of the old bed of the branch, at a part of the fence between the lots now in the possession of Habb, on the south, and of Hayne, under Farmer, on the north, 2 chains, and N. 70 E. from their division corner on the east side of the Bellefontaine road, and 14 links S. 70 W. from the corner post of their division fence on the left bank of the present bed of the branch, the point above designated as being in the middle of the old bed of the branch, is evidently so beyond dispute, the branch having been turned from its original channel by a stone wall a few links above, but the original bed is yet plainly marked.
Thence N. 3¼ W.

1 00 A point on the left bank of the branch.
Thence N. 51¾ E.

0 73 A point in the branch.
Thence S. 72½ E.

Chains.

3 39 A point in Ashbrook's pork-house.
Thence N. 17½ E.

0 59 A point of the western side of a house appendant to Ashbrook's pork-house.
Thence north.

1 00 To a point in the old bed of the branch.
Thence N. 64 W.

2 32 A point in the old bed of the branch.
Thence N. 1 W.

1 26 The N. W. corner of a brick house in the old bed of the branch, the centre thereof and 256 links S. 69 W. from the S. W. corner of Dock street and Broadway.
Thence N. 33¾ W.

0 77 The north side of Dock street, 273 links S. 69 W. from the northwest corner of Dock street and Broadway.

0 91 A point in the old bed of the branch.
Thence N. 25½ E.

1 00 A point in Brown's old line.
Thence S. 82¾ E.

1 10 A point 30⅓ links N. 21 W. from the north side of Dock street.
Thence N. 5¾ W.

2 02 A point in the present and old bed of the branch, and on Brown's old course.
Thence S. 78½ E.

0 63 Intersect the west side of Broadway 191 links N. 21 W. from the N. W. corner of Broadway and Dock street, and at the N. E. corner of a frame house.
Thence S. 79½ E. across Broadway, which is 80 feet wide at —— and southward from these meanders.

1 44 The east side of Broadway 115 links N. 21 W. from the N. E. corner of Broadway and Dock street.
Thence N. 86½ E.

0 95 A point 86⅓ links N. 21 W. from the north side of Dock street.
Thence N. 24 E.

0 63 A point 13¾ N. 21 W. from the north side of Dock street.
Thence N. 5 W.

0 52 A point 208 links S. 69 W. from the west side of 2d and Main streets.
Thence N. 3 E.

1 99 A point 127 links S. 69 W. from the west side of 2d or Main street, and 245 links N. 69 E. from the east side of Broadway.
Thence N. 9¾ E.

0 66 A point 93¼ links S. 69 W. from the west side of 2d or Main street, and near the present drain of the branch.
Thence N. 70¼ W. passing through a brick slaughter-house.

Chains.

1 18 The division line between Overman and Overfeldt, and in the old bed of the branch.
Thence S. 69 W. with the line between Overman and Overfeldt, and down the old bed of the branch.

1 79 A point on the east side of Broadway, which is here 70 feet wide.
Thence N. 55¼ W.

1 34 A point in Broadway.
Thence N. 27¼ E.

1 00 A point in the old bed of the branch on the east side of Broadway 59 links S. 21 E. from the S. E. corner of Broadway and Buchanan street, and 101 links N. 21 W. from the N. W. corner of Overman's brick house.
Thence N. 51½ E.

1 10 A point in the old bed of the branch.
Thence S. 64½ E.

1 70 A point in the old bed of the branch.
Thence N. 64½ E.

0 42 A point in the old bed of the branch.
Thence N. 27½ W.

1 70 A point in the old bed of the branch (in Buchanan street).
Thence N. 41½ E.

1 45 A point in the old bed of the branch on the west side of 2d or Main street, 832 links N. 21 W. from the N. W. corner of said street and Dock street.
Thence S. 48½ E.

2 62 A point on the east side of 2d or Main street.

3 07 A point in the old bed of the branch.
Thence N. 87½ E.

5 46 The mouth of the Rocky branch, and which accords with the designation thereof in the survey of the northwestern boundary line of the city of St. Louis: from the mouth of the branch the N. W. corner of 2d or Main street and Dock street bears S. 37¼ W. 771 links distant, and on the northwest boundary line of the city of St. Louis it is S. 22 W. 661 links to the south boundary of Dock street at a point 208 links N. 69 E. from the S. W. corner of said street and 2d or Main street; also the point adopted by Mr. Brown as the mouth of the branch in his survey of 1833, bears S. 53¼ W. 170 links distant, and the point which he adopted as the mouth in his survey of 1817 bears S. 80½ W. 462 links distant, and it is 735 links at a corner of N. 81 E. across a high and increasing sand beach on the Mississippi river to the edge of the water thereof, showing a continued augmentation of the innings; it is 466 links on the course S. 67 W. to what is called the first bank of the Mississippi river, and 250 links

Chains.

further to the high bank; the water of the Rocky branch from appearances not to be mistaken formerly made its way from this point which I have adopted as its mouth through the sand beach to the water of the Mississippi river in a northeastwardly direction and united there with *some distance above*, which I believe is generally, if not universally, the case where sand-bars are found at the mouths of water-courses emptying into the Missouri and Mississippi rivers, and it may be so of all other large rivers, but my personal knowledge in this respect extends only to these: at present, however, the water of the branch runs from here through the sand-beach in a southeastwardly direction, and unites with the water of the river some distance, as will be presently shown, it having by unmistakable evidence been rather recently diverted from its natural and ordinary course by manual operations intended to produce this result. From the mouth of the Rocky branch, as before designated, I run down the right bank of the Mississippi river with the meanders thereof between high and low water mark, as follows:

S. 9 E.

8 66 Set a stake on the line of Mr. Brown's meanders of 1833, 8 chains S. 20 E. from the then mouth of the Rocky branch, and from this stake on a course S. 53 W. it is 240 links to the first or low bank, and 450 links to the high bank of the Mississippi river.

Thence S. 20 E. with Mr. Brown's meandering line of 1833.

5 50 A point from which I offset N. 70 E. 183 links centre of the Rocky branch, as it now runs through the sand beach 6.63 chains to the bluff of the sand beach, and 7.47 chains to the water of the Mississippi river.

10 00 Set a post at an angle of Mr. Brown's meanders of 1833, 140 links N. 53 E. from a point on the high bank of the Mississippi river, from this post the southeast corner-post of a stable on the slope of the bank bears S. 42 W. 46 links, and the upper point of the present entrance of the water of the Rocky branch into the water of the Mississippi river bears S. 62½ E. 16 chains.

Thence S. 34 E.

7 05 The extension eastward of Labeaume's upper ditch 19.75 chains N. 74½ E. from the corner of his survey with the Sycamore witness tree.

15 34 A point from which the N. E. corner of survey No. 1487 bears S. 56 W. 81 links distant, said corner is on the slope of the high bank.

25 00 Set a stake at an angle of Mr. Brown's meanders of 1833, from which the corner of surveys 1486 and 1487 on the east

Chains.

boundary of the St. Louis common field and on the high bank bears N. 75¼ W. 200 links distant, it being 140 links to the slope of the high bank.

Thence S. 23 E. with Mr. Brown's line of 1833.

6 30 A point from which it is 76 links S. 67 W. to the slope of the high bank, and the corner of surveys 3306 and 1486 on the high bank of the river, and on the east edge of an old lime-kiln bears S. 67 W. 154 links distant.

13 67 The N. E. corner of Robertson and Patterson's steam saw-mill, from which the foot of the high bank of the Mississippi river is 92 links, and the top of said bank is 117 links on a course S. 67 W.

14 08 S. E. corner of said mill.

17 45 Corner of a steam saw-mill is 30 links to the right.

20 57 S. E. corner of Hendrick's flour-mill is 19 links to the right.

23 35 N. E. corner of Cochran's saw-mill.

30 95 The beginning corner.

Containing 339.68 acres, equal to 399.30 arpents, being an excess of 21.52 acres, equal to 25.30 arpents over the quantity called for by Soulard.

WILLIAM MILBURN,

February 2d, 1852. Deputy Surveyor.

OFFICE OF THE SURVEYOR-GENERAL FOR ILL. AND MO.,
ST. LOUIS, February 26th, 1852.

The foregoing field-notes (on pages 1 to 33 inclusive) of survey No. 3333 of 339.68 acres, equal to 399.30 arpents, as returned by William Milburn, deputy-surveyor, under his instruction of the 22d August, 1851, from this office, have been examined and found correct, and the said survey has been executed in conformity with said instructions.

M. LEWIS CLARK,
Surveyor-General.

OFFICE OF THE SURVEYOR-GENERAL FOR ILL. AND MO.,
ST. LOUIS, March 9th, 1853.

I certify that the foregoing, on pages 1 to 30 inclusive, are correctly copied from the original field-notes of survey No. 3333, as executed by William Milburn, under instructions from this office, of the 22d August, 1851.

D. A. SPAULDING,
Surveyor-General.

(For plat, see original, page 98.)

Exhibit HH. Recorder's Certificate on Survey No. 3333.

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, February 26th, 1852.

Patent Certificate No. 1249.

It is hereby certified, that on the 15th of February, 1799, Zenon Trudeau, lieutenant-governor of the Spanish province of Upper Louisiana, made a concession of about 360 arpents of land to Louis Labeaume, and that on the 2d of March of the same year, it was surveyed by Antoine Soulard, surveyor of the same province, to the amount of 374 arpents, situated three miles north of the town of St. Louis. It is further certified, that the board of commissioners, appointed in pursuance of the fifth section of the act of Congress, approved the 2d of March, 1805, entitled An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana, confirmed on the 22d of September, 1810, 356 arpents to Louis Labeaume, agreeably to the aforesaid concession; and that on the 14th of June, 1811, they issued their certificate, numbered 982, for that confirmation, under the fourth section of the act of Congress, approved the 3d of March, 1807, entitled An Act respecting claims to land in the territory of Orleans and Louisiana. It is further certified, that the Hon A. H. H. Stuart, secretary of the department of the interior, decided, on the 25th of July, 1851, that those claiming under Labeaume are entitled to a patent for the land, according to Soulard's survey and Labeaume's possession, and that he directed the necessary survey to be made, and a patent issued in conformity therewith. It is further certified, that the lines of the said Soulard's survey have been retraced, in conformity with the decision referred to, as appears from the accompanying plat and description of survey, numbered 3333, authenticated and returned this day to this office, by M. Lewis Clarke, surveyor-general for Illinois and Missouri.

Now, therefore, be it known that Louis Labeaume, or his legal representatives, is entitled to receive a patent for three hundred and thirty-nine acres, and sixty-eight hundredths of an acre, equal to 399 30-100 arpents of land, the contents of said survey, No. 3333, which is situate in township numbered 45, north of the base line and range 7, east of the 5th principal meridian, in the State of Missouri.

(Signed) ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

To JUSTIN BUTTERFIELD, Esq.,
Commissioner of the General Land Office, City of Washington.

Exhibit JJ. Patent to Labeaume's representatives.

The United States of America to all whom these present shall come greeting:

Whereas, there has been deposited in the General Land Office a Patent Certificate, No. 1249, of the Recorder of Land Titles at St. Louis, Mo., whereby it appears that, on the fifteenth day of February, 1799, Zenon Trudeau, Lieutenant Governor, made a concession of about 360 arpents of land to Louis Labeaume, and that on the second day of March of the same year, it was surveyed by Antoine Soulard to the amount of 374 arpents, situate three miles north of the town of St. Louis, and that the board of commissioners appointed in pursuance of the fifth section of the Act of Congress, approved March 2d, 1805, entitled An act for the ascertaining and adjusting the titles and claims to land within the territory of Orleans and the District of Louisiana, confirmed on the twenty-second day of September, 1810, 356 arpents to Louis Labeaume, agreeably to the aforesaid concession, and that on the fourteenth day of June, 1811, they issued their certificate No. 982, for that confirmation, under the fourth section of the Act of Congress, approved the fourth day of March, 1807, entitled An act respecting claims to land in the territory of Orleans and Louisiana. And whereas, it appears from the aforesaid patent certificate, that, pursuant to the decision of the 25th of July, 1851, of the secretary of the interior, those claiming under Labeaume are entitled to the land, according to Soulard's survey and Labeame's possession, and that the lines of the said Soulard's survey have been retraced, in conformity with the decision referred to, as appears from the plat and transcript of survey No. 3333, which accompany said patent certificate, the said plat and transcript of survey having been authenticated by M. Lewis Clark, Surveyor General for Illinois and Missouri, under date of the 26th of February, 1852, which survey No. 3333 contains 339 68-100 acres, being situate in township 45, &c.; and which plat is described as follows, to wit: Beginning at a stake set on the right bank of the Mississippi, between high and low water mark, &c. The description here follows—same as in Milburn's return, &c., &c.

Remarks by the Surveyor.

The survey of this tract, as made by A. Soulard, in March, 1799, and recorded in "Register A, Arpentage," page 130, a copy of which is attached hereto, represents the area thereof to be 374 arpents, there being 25 30-100 arpents less than found by this survey. But as no notes of Soulard's survey describes the meanders of the Mississippi river and of the Rocky branch, the former bounding the tract on the east, and the latter in part on the north, there are, therefore, no means to ascertain whether the difference or excess in the area of

this survey, over that given by Soulard, is owing to a miscalculation by said Soulard, or to the subsequent accretion along the bank of the Mississippi river since Soulard's operations. This accretion appears to be rapidly advancing, That portion of the tract eastward of the high bank shown topographically on the foregoing plat, the top of which is designated by the dotted lines "*a*, *b*, *c*, *d*, *e*, and *f*," appears to be the accretion since Soulard's times, and contains about fourteen acres. The following is a copy of Soulard's survey:

Statement of the interference of certain surveys of lots in 3333, in the name of Louis Labeaume.

1st. Survey No. 1487.—Concession of 2 by 40 arpents to widow Hebert—survey of same certificate, May the 23d, 1772, by Piernas, Lieutenant Governor, &c., and Austin Duralde, a surveyor duly approved by said Piernas—confirmation to widow Hebert's representatives by second section of the act of April the 29th, 1816.

2d. Survey No. 1486.—Concession of 2 by arpents to Dubruisseau's representatives, and certified as above—confirmation as above to Dubruisseau's representatives, Livre Terrien No. 2, 39, 67 and 68—Bates' Minutes, page 12, and his decision, page 4.

3d. Survey No. 3306.—Concession of 3 by 40 arpents to widow Dodier, survey and certificate as above—confirmation to widow Dodier, or her representatives, by first section of Act of 4th of July, 1836, Livre Terrien, No. 2, pages 38, 67 and 68.

4th. Survey No. 1485.—Concession of 4 by 40 arpents to Dubruisseau, surveyed and certified as above—confirmation to Dubruisseau's representatives by second section of Act of the 29th of April. Livre Terrien No. 2, pages 37, 67 and 68.

5th. Survey No. 1410.—Jacques Clamorgan, assignee of Ortez under Gabriel Dodier, concession of 2 by 40 arpents to Gabriel Dodier, surveyed as above—sale by the widow of Gabriel Dodier to John B. Ortez the 10th of January, 1810—sale by Ortez and wife to Jacques Clamorgan the 4th of April of the same year—confirmation to Gabriel Dodier's legal representatives by the act of the 12th of June, 1812. Livre Terrien, No. 2, pages 35, 67 and 68.

6th. Survey No. 1484.—Concession of 3 by 40 arpents to Paul Gregoire Kiercereau, survey and certificate as above, &c., &c.

7th. Survey No. 1486.—Concession to Joseph Taillon of 1 by 40 arpents, survey and certificate as above—confirmation to Joseph Taillon's representatives by second section of act of April the 29th, 1816. Livre Terrien No. 2, pages 33, 67, and 68. Bates' Minutes, page 12, Decision Book, page 3.

8th. Survey No. 380 of St. Louis Lands.—A piece of vacant land of 19 88-100 acres, designated and set apart to the public schools of the city of St. Louis by the surveyor-general, on the thirty-first day of March, 1845, pursuant to the acts of Congress of June

13th, 1812, May 26th, 1824, and January 27th, 1831, and the instructions of the commissioner of the General Land Office, the 15th of January and 18th of February, 1839.

9th. Survey No. 1482, General Series.—Concession of 1 by 40 arpents to Jean Baptiste Sarpy, survey and certificate as above, by Duralde and Piernas—confirmation to J. B. Sarpy's representatives by the second section of the act of April 29th, 1816. Also, confirmation by the act of June 13th, 1812, &c., &c.

10th. Survey No. 1481.—Concession of 1 by 40 arpents to Vien, survey and certificate as above—confirmation to Vien's representatives by act of the 29th of April, 1816.

11th. Survey No. 1480.—Concession of 1 by 40 arpents to Moreau, survey and certificate as above—confirmed to Moreau's representatives by act of the 29th of April, 1816, &c., &c.

12th. Survey No. 1479.—Concession of 1 by 40 arpents to Lirette, survey and certificate as above—confirmation to Lirette's representatives by act of the 29th of April, 1816.

13th. Survey No. 734.—Notice of a claim by John Mullanphy to 80 arpents of land, as an improvement right under the assignment of Baptiste Provenchere—deed from Baptiste Provenchere to John Mullanphy, dated August 26th 1805—confirmation to John Mullanphy, assignee of Provenchere, June 1st, 1811, by the old board, as per certificate No. 734, under the second section of the act of the 3d day of March, 1807. Minutes of the old board, book No. 4, page 197; No. 5, page 165, and certificate No. 734.

Now, know ye that there is, therefore, granted by the United States unto the said Louis Labeaume, or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid survey No. 3333, saving and reserving any valid adverse rights which may exist to any part thereof.

To have and to hold the said tract of land, according to the said survey No. 3333, unto the said Louis Labeaume, or his legal representatives, and to his or their heirs and assigns forever, with the saving and reservation aforesaid.

In testimony whereof, I, Millard Fillmore, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this 25th day of March, 1852.

By the President, MILLARD FILLMORE.

By ALEX. MCCORMICK,
Secretary.

JOHN WILSON,
Acting Recorder of the General Land Office.

Recorded Vol. 11, pages 150 and

Act of Incorporation of the Marine Railway.

An act to repeal the charter of the St. Louis Marine Railway Company.

Stockholders authorized to determine the disposition to be made of lands of said company, and to convey the same—each share entitled to vote.

When the company's effects are finally disposed of, the corporation shall cease; meetings for the disposition of said effects regulated, and proceedings at such meetings.

Whereas the St. Louis Marine Railway Company has failed to accomplish the object of its incorporation, and it being the wish of the stockholders that the affairs of the company should be settled up, the property divided or disposed of, and the act of incorporation repealed; now, therefore,

Be it enacted, by the General Assembly of the State of Missouri, as follows: 1st. That the owners of the stock in the St. Louis Marine Railway Company, or the executors or administrators of such owners, are hereby authorized and empowered to hold a meeting at the court-house in the city of St. Louis, on the second Monday of March next, for the purpose of determining what disposition shall be made of the lands and property belonging to said company; and at that and an adjourned meeting or meetings, to provide for the sale, gift, partition, or other disposition of the same. And any deed or deeds of conveyance, sale, or partition of the same, or any part thereof, executed in the name of said company, in conformity with the resolutions or directions of stockholders, shall be effectual to pass the title of the lands and property according to the terms of such deeds or conveyances. Provided, that at such meetings each share shall be entitled to one vote, and may be represented by proxy, with a written authority to that purpose.

2d. That upon the final disposition of the property and effects of said company by the stockholders aforesaid, and the payments of the debts and liabilities thereof, if any, the said corporation shall be dissolved, and the act incorporating them shall be repealed to all intents and purposes.

3d. That said stockholders may hold meetings on their own adjournments from time to time, for the accomplishment of this act, and meetings may also be called by any two stockholders, by a notice published for two weeks previously in some public newspaper, printed in the city of St. Louis; at any of which meetings, whether called or adjourned, as aforesaid, the proceedings of the stockholders, present in person or by proxy, shall be binding on all, and effectual for the management and disposal of the property of said corporation

and the closing up of its effects. This act to take effect from its passage.

Approved Feb. 15, 1841.—*Laws of Missouri, page* 187.

The proceedings of said Marine Railway in respect to making the deed from John O'Fallon, survivor, to plaintiff.

ST. LOUIS, Dec. 31st, 1851, 4 o'clock P.M.

In pursuance of a notice, of which the annexed advertisement is a copy, a meeting of the stockholders of the St. Louis Marine Railway Co. was held at the office of F. N. Haight, at which were present Daniel D. Page, owning seventy shares, Peter Lindell, twenty shares, and Louis A. Benoist, fifty shares.

On motion, the following resolutions were passed:

Resolved, that the land belonging to or claimed by the St. Louis Marine Railway Co., in the city of St. Louis, and north of what is known as Labeaume's ditch, being four arpents in front on the river and four arpents in depth, and bounded east by the Mississippi river and south by said ditch of Labeaume, and containing sixteen arpents, be conveyed to John Magwire; and that John O'Fallon, surviving trustee, who holds the legal title to said land, be and is hereby directed to make said conveyance to said Magwire, and deliver the same.

Resolved, that on receiving the deed in the last resolution mentioned, said John Magwire execute and deliver to the scockholders of said company an agreement to commence suit or other proceedings without delay, and at his own expense, for the recovery of the land to be conveyed to him; and on recovering the same, or any part thereof, to convey to each stockholder such portion of said land as shall be equal to one-fourth of what is represented by the stock such stockholders may hold at the time of said recovery.

That is, each share represents the two-hundredth part of said land; and in case of recovery said Magwire is to convey to each stockholder, for every share of stock, one-fourth of the two-hundredth part of such land as may be recovered.

Adjourned, to meet at the same place, on the 5th day of January next, at 4 o'clock, P. M.

DANIEL D. PAGE,
PETER LINDELL,
L. A. BENOIST.

William F. Cozens' Testimony.

Wm. F. Cozens, called by plaintiff, testified that he was a practical surveyor, and had been for 22 years; that he was familiar with the lands in and about St. Louis; that he was familiar with the concession to Brazeau, in the northern part of the town, now city of

St. Louis, and also that he was familiar with the extended concession to Labeaume; that he was familiar with the plats of said concessions in the office of the recorder of land titles; it has been 10 or 12 years since I traced these lines, and I have not made myself very familiar with them lately. Plaintiff then exhibited to witness Survey of Confirmation Certificates No. 982 and 983, made by Jas. C. Brown, in 1817; also the proceedings of the board of commissioners, under the Act of Congress, for the adjustment of land titles on the claims respectively of Joseph Brazeau and Louis Labeaume.

Also, a map or plat annexed to the survey by N. F. Heyer. Also, the concession to Esther by the Spanish government. Also, a deed from Joseph Brazeau to Louis Labeaume, dated May 9th, 1798. Witness having examined all these papers and documents says he is familiar with all of them; that he is familiar with the lines and boundaries of the tracts of land referred to. Witness was then asked by plaintiff, with these lines and papers before him, to designate and point out the out-boundary lines of the four-by-twenty arpents of land conceded to said Joseph Brazeau.

Witness, in answer to this question, states that he had measured the ground between what are called Labeaume's north and south ditches, and found them distant from each other about 20 arpents. Witness knew these ditches in 1831. Rocky branch had a rocky bottom and high bank; the descent on the south side was seven or eight feet; on the north side very steep. Had had a mill there; the northern ditch was but a short distance south of that, at the corner of Cerre's concession; the ditch ran to the river; from the upper or northern to the southern ditch there had been cultivation.

The ditch did not include the triangle above it. If the four-by-twenty arpents conceded to Brazeau were to commence at the north end of the concession to Esther, the south end to be bounded by Esther, then I should locate the 4 by 20 arpents north of the Labeaume's south ditch. There was no survey of the Esther grant. I should in such case commence at Labeaume's south ditch and run north the distance of 20 arpents; and inasmuch as Brazeau reserved 4 arpents out of his grant, the reservation would come out of the south end of the tract of 4 by 20 arpents; the reservation of 4 arpents would be bounded on the south by Labeaume's south ditch, on the north by a line 4 arpents north of the south ditch, east by the Mississippi, and on the west by a line 4 arpents west from the west bank of said river; the river at that point has a rocky branch, and has been so since witness has known the premises, and he has known them since 1831. The south line of the 4 by 20 arpents, as granted to Joseph Brazeau, is beyond the mound called La Grange de Terre, at the north end of the grant to the mulattress Esther. The whole of the said 4 by 20 arpents is north of the south ditch of Labeaume, and the said south ditch is the south line of said 4 by 20 arpents.

On cross-examination this witness stated that he recollected testifying in the case of Magwire *v.* Vice, in 1853, in the Court of Common Pleas. Here reporter's notes of Cozens, at page 66, are read to the witness, as follows:

Wm. H. Cozens, being sworn on behalf of defendants, says: I am a land surveyor, and have been so since 1836, and always in St. Louis; commenced serving my time under Réne Paul, former city engineer and county surveyor.

Paul was an old surveyor; had been in St. Louis since 1808 or 9. I know the location of all the Spanish grants north of the Spanish town of St. Louis. I was shown the position of the "Demi lune" by Réne Paul, and saw it afterwards with Brown. It is on the northeast corner of Block 16, south of Cherry street, about 40 feet south of Cherry street, and 60 or 70 feet from the west side of Front street; it stood on a projection of rock; the site is now destroyed by the rock taken away by Mullanphy. I know where Roy's mill is; remains is still standing on the Roy tract, between Biddle and Ashley street. Witness shown a tract of all the lands north of St. Louis, marked Diagram A. From the north edge of Cherry street it is 1507½ English feet, in a direct line, to Roy's windmill. Demi lune is 40 feet south of south side of Cherry street.

Cherry is about 32½ feet wide; 100 French feet make 106 $\frac{24}{100}$ English feet. From Demi lune (old Fort) to Roy's windmill is 1579½ feet. It is from the southeast corner of Roy's south line to Labeaume's south ditch, about 23 arpents distant. From Roy's windmill (north side of it) to Labeaume's ditch is about 21 arpents. The windmill is about 2 arpents south of Roy's north line. From Roy's tower (windmill) to Roy's south line is about 1 arpent distant, along the river front; from the southeast corner of Roy's tract to ditch is 24, and about 23 from southwest corner.

Question. From north foot of Big mound, along the front line of common fields, to Labeaume's south ditch, what is the distance?

Answer. A little rising of 4 arpents, probably 20 or 30 feet over 4 arpents. I have measured from the north foot of the Big mound to the river.

Question. From the east line of common fields, and running from the north foot of the mound to the river, parallel to the ditch, what will be the number of arpents included?

Answer. About 20 arpents, superficial measure. I have known the Big mound well since 1830 and 4. In approaching the mound from the river front the ground rises gently, until it comes nearly to the foot of the mound, and just at the foot presents a very abrupt rise, and on that abrupt rise stands the Big mound. "The mile starting south of mound from Howard street northward, curving a little to west, and passing eastward around the east spur of the mound, then passing in a northwest direction over Broadway to the southwest corner of the ditch." This description gives the line of the brow of the hill.

The descent from this line to the first plateau was very abrupt, some 15 or 20 feet of a fall. From the face of the ridge, just described, it was about 66 feet to the foot of the hill.

From the foot of the hill the ground descends to the river, and north to Labeaume's ditch, by regular, gentle plateaus, both ways. The water would run eastward and northward from the mound. I should think northward clean to the ditch. It was a drain. There were two bridges on the ditch; the remnants of one can be seen yet. The hill was not an inclined plane; it was terraced. The plateaus were almost level. The descent of plateaus not perceptible to naked eye.

Question. As a surveyor, how would you proceed to ascertain the foot of the hill where the mound stands, and how locate the foot of the hill?

Answer. The foot of the hill where the mound stands is at the termination of the ridge just described. I have traced the lines of Labeaume's survey No. 2300. The old Bellefontaine road was on the top of the ridge west of the Big mound, as far as Labeaume's south ditch, and then ascended the hill, and ran along the base of the ridge west of Labeaume's west ditch to the northwest corner of ditch, and then turned east to the crossing Thabbi's ford (of the Rocky branch).

Question. Have you any idea where that road began to descend into the Rocky branch?

Answer. It began to descend from the point G, on Hyer's map, towards the creek. This descent was very sudden, and was north of where the bridge now is. Since my time there have been great changes; there the road has had two positions. I have examined where letter W is on Hyer's map at the southwest corner of the ditches. In the quadrangle from that corner there are $42\frac{70}{100}$ arpents that was measured to the bluff bank of the river. From the ford to the river, and up the river to the Rocky branch, to the point of beginning, $22\frac{29}{100}$ arpents. I first traced the lines of Soulard's survey in 1839 with Mr. Brown. I assisted Mr. Brown. This was the first time I went round those lines. I have been round this survey since, frequently, from three to five times a year. I have traced the connection of these surveys south of Labeaume's tract; have made them all. Had certified copies of maps when I made these surveys. I read French, but not fluently.

Witness shown Labeaume's petition, Brazeau's, Chouteau's, Roy's, Esther's, and deeds from Brazeau to Chouteau, and from Brazeau to Labeaume, and translations of them all; also United States connected plat.

From my knowledge as a surveyor I locate the concession to Brazeau, containing four by twenty arpents, as follows:

I first go to the foot of the hill on which stands the Big mound (letter H, from centre of H), thence in going up the river as far as

the environs of the Rocky branch, twenty arpents in length. At the termination of the twenty arpents I would stop. That line should be parallel to the general direction of the river. I locate from Brazeau's deed to Labeaume; the reservations of four arpents as four lineal arpents on the south end of the Brazeau tract as just located. This being the south end of the reservation to H, on Hyer's map, and south of the ditch. The tract bought by Labeaume of Brazeau I would locate between the north and south ditches.

I locate Labeaume's extension according to the concession to Labeaume, and the deed from Brazeau to Labeaume taken together. 1st, by extending the north line of Brazeau's concession westwardly, and the south line of Brazeau's conveyance to Labeaume westwardly, and including the angle between Brazeau's west line, the river and the creek to make the quantity. Soulard's survey of Labeaume corresponds to the closed lines of the Labeaume tract on Hyer's map.

The Esther concession.—The north end of it between the river and the mound; north line at the end of Brazeau's concession, at letter H. I should then descend the river for quantity, twenty arpents in length. It would cover the whole of Roy's tract. Christy was on the land from 1802 till his death. He left children: Mrs. Dean, Smith Swearingen, Howard Christy, and others. Christy claimed to the south ditch, and had fence down to that. Colonel Chambers and Wright had an interest in that tract also. I surveyed some lots for Col. Chambers in 1840 and 1841 in that tract. Surveyed west of Broadway in 1840, and at the river in 1841. Chambers had houses near the Old Brewery buildings, and had tenants in them. He employed me to collect the rents in 1840. I collected his rents for about one month, but finding it interfered with my other business I gave it up. At that time he had four or five tenants on that place. I made plats and surveys for Mr. Bogy and others.

Here witness is shown a paper containing a certified copy of an agreement between Chouteau and Strother, dated 1822.

I should locate second tract between East Mound street, including street, and Labeaume's south ditch, and east from common fields and the river. Hempstead street is the first street south of Labeaume street.

Cross-examined.—Hempstead street was laid out in 1836 by Dr. Ward. Is about 450 feet long, exclusive of Broadway street. Christy's gate was on the ditch; was on lot No. 48, in block 292, on Hyer's map; was there in 1839 or 1840. I know Waddingham. He was living in what was called Haunted House, on Broadway, near the Big mound, when I came to St. Louis. He owned a good deal of property there. I began my acquaintance with Chambers in 1839 or 1840. Surveyed for him along the Rocky branch, and in 1840 in block 288; ran a line for a fence. This is the only surveying made by me in the four by four arpents for him in 1840. In block No. 292 I measured from street to street, but this since 1840;

have made the survey of but two lots in the four by four for Mr. Chambers. There was a little house in front of the old house in block 288, occupied by Walters in 1840, and on the river. In the north part of that tract there was a saw-mill at that time. The line I ran went through that house. There were some buildings in block 292 occupied as a stable, about the middle of the block; also a little house in block 292, about 57 feet north of the ditch, occupied as a residence. In block 288 there was a little row of buildings on the river, about 150 feet north of the ditch. I remember no other buildings in the four by four arpents. Don't know who built these houses. I collected rent from Walters. I called on all the tenants for rent, but did not collect from them; took down their names, &c., and gave the memoranda to Mr. Chambers. Col. Chambers was an old man when I knew him.

Witness handed Labeaume's concession.

As a surveyor, from this concession, I would begin from the descent of the road to the creek, at letter N, on Hyer's map.

Plaintiff offers in cross-examination copy of opinion of Mr. Cozens, in June, 1851.

From the concession handed me by Mr. Evans, at the time I gave that as my opinion, the French in that paper read, "in to the creek." But the French in the original concession does not read so. If I am governed by the original plat and concession, the northern part of the concession is situated between the Little mound and the river, and extends between three and four arpents north of the mound.

If Brazeau's four by twenty arpents is put beyond the mound it would be north of the mound; N. $\frac{1}{4}$ W. is $\frac{1}{4}$ of 90° N. 22° W. All the Spanish corner-stones I have found on the high bank of the river; some a little further back. The bank is an original ledge of rocks to the branch; stands now as stood years ago—one hundred years ago—except where it has been interfered with by buildings. I saw Labeaume's south ditch in 1834 or 1835; have crossed it often at those dates. When I surveyed in that neighborhood there was no trace of the "Demi lune" (old fort) on the south side of Mound street; there were inclosures down to Main street; between this fence and the mound there was an open space. Two years ago, my testimony was taken for perpetuation. Previous to 1850, I made a survey of the concession to Brazeau at the instance of Mr. Sturgeon; it may have been in the fall of 1850.

Re-examined by Defendant.

Peter Chouteau made several surveys himself. Augustus H. Evans drew up the paper which Mr. Lord handed me; and he was acting on behalf of D. D. Page. I don't recollect of having seen the remains of Brazeau's limekiln.

By the Court.

My written opinion, above referred to, was based on the papers handed me at the time by Mr. Evans. I gave evidence also in perpetuation in regard to these matters. Witness supposed his testimony was substantially the same in both instances.

Counsel for defendants show to witness a map, which is annexed to his deposition in perpetuation, and also reads to him his testimony given in perpetuation, as follows:

William H. Cozzens, of lawful age, being produced, sworn, and examined on the part of said petitioners, deposeth and saith as follows:

Question. What is your profession?

Answer that of land surveyor.

The further taking of these depositions is adjourned until Tuesday morning, August 19, 1851, at the hour of ten o'clock.

M. L. CERRE.
Clerk.

Pursuant to adjournment, I continued the taking of these depositions between the hours and at the place in the annexed notice named, this 19th day of August, 1851.

M. L. CERRE.

The examination of William H. Cozzens being resumed, said witness deposeth and says as follows, to wit:

Question. State as to your familiarity with the surveys in and about St. Louis, and with the surveys and confirmations of French and Spanish grants.

Answer. I am very familiar with all these surveys and concessions; I have had occasion to retrace the lines of all of them.

Question. State whether you have been engaged in the making of such surveys; and if so, for how long a time?

Answer. I have, for over sixteen years.

Question. State whether you have been engaged in making surveys in reference to a tract of four by twenty arpents, granted to Joseph Brazeau; of four by twenty arpents, granted to Esther; and of three hundred and sixty arpents, more or less, granted and confirmed to Louis Labeaume; and of other surveys and grants contiguous thereto.

Answer. I have been engaged in making such surveys.

Question. Has the result of these surveys been reduced to a plat?

Answer. They have.

Question. Annex such plat to these depositions.

Answer. The plat lettered A. is a representation of the connection of these surveys.

Question. State what letters upon that plat represent the loca-

tion, as made by you, of the Esther grant; what the Brazeau; what the Labeaume; and what the other grants contiguous to these.

Answer. The letters *a d h* and *g* represent the position of the Esther claim of four by twenty arpents; the letters *a e f* and *d* represent the location of the Brazeau tract of four by twenty arpents; the letters *a b i k m* and *r* represent the United States survey, No. 2974, of the Louis Labeaume tract; the letters *q p s t u* represent survey No. 671, in the name of Peter Chouteau, for ninety-three arpents and one perch; the letters *v w x y q* represent survey No. 181, in the name of Antoine Roy, for nine acres and eighty-five-hundredths of an acre—the said survey being represented on the annexed plat by a green tint. The figures 1 2 3 and the letters *x w* and *v* represent survey No. 1416, in the name of John Mullanphy under H. Egliz. United States surveys No. 331, 372, and 473, are correctly represented on the annexed map.

Question. State whether you know the situation and location of Labeaume's ditches.

Answer. I do.

Question. State whether they be represented in the annexed plat A.; and if so, how are represented?

Answer. They are represented on the annexed map by shaded lines, some of which is written "Labeaume's southern ditch;" on another, "Labeaume's western ditch;" and on the third, "Labeaume's northern ditch."

Question. State whether these lines represent truly the situation of those ditches.

Answer. They do from actual survey.

Question. State as to the situation of Labeaume's ditch being to surveyors well known or otherwise.

Answer. It was well known to the old surveyors.

Question. State whether you have ever seen any traces of that ditch; if so, when, what they were, how long they existed, and any other particulars relating thereto.

Answer. I have seen these ditches; I saw them for the first time in the years 1833 and 1834. The remains of those ditches could be plainly seen until lately—within the last two or three years. Up to 1835 or 1836, the tract *the tract* of land within the ditches was inclosed with a rail fence.

Question. To what Spanish survey did you allude in describing the Labeaume tract, No. 2974.

Answer. To the survey made by Antoine Soulard the 10th of April, 1799.

Question. Do you know the situation of the "Demi lune?"

Answer. I did not know personally, because its remains were removed before my recollection.

Question. State whether the place where it was situated is well known to surveyors.

Answer. It was well known to two of the old surveyors, Paul and Brown, both of whom have shown its position to me; and the place as designated by them is represented on the annexed plat by letter Z; Paul and Brown are both lately deceased.

Question. Do you know the location of Roy's tower?

Answer. I do.

Question. Does the annexed map A. show its position correctly?

Answer. It does; the walls are still standing; it is represented on said map thus, "O +. Roy's Tower."

Question. State the distance from Labeaume's ditch to Roy's south line.

Answer. From Labeaume's south ditch to Roy's south line is twenty-two and nine-tenths arpents.

Question. How far is it from Labeaume's south ditch to Roy's tower?

Answer. It is twenty-one arpents.

Question. What is the distance from the front line of the common field lots at the north end of Big mound, in a direct line to the river?

Answer. The distance by measurement is four arpents and one hundred and twenty-seven French feet.

Question. What is the distance from the north end of the Big mound along the front line of the common fields to Labeaume's southern ditch?

Answer. Four arpents and twenty French feet.

Question. What is the distance on a straight line between the eastern line of Labeaume's southern ditch along the river and Rocky branch?

Answer. Twenty-five arpents and sixty-six French feet.

Question. State what is the distance from Roy's line north and south to the centre of Roy's tower?

Answer. From the south line of Roy's tract to the centre of his tower is about three hundred and sixty-two feet; and from the northern line of said tract to the centre of the tower is about three hundred and eighty-two feet.

Question. What is the distance from Labeaume's south ditch to Roy's south line?

Answer. Twenty-two arpents and nine-tenths of an arpent.

Question. State what is the quantity of land between Labeaume's north ditch and Rocky branch within survey 2974?

Answer. The quantity of land within those limits is by careful admeasurement forty-two and seventy-two hundredths arpents.

Question. What quantity of land is within the square formed by the common field line, Labeaume's ditch, the river, and the line drawn from the northern end of the Big mound parallel with said ditch to the river?

Answer. The quantity is twenty-six arpents and forty-six hundredths of an arpent.

Question. Describe the character of the surface of the ground around the Big mound, particularly towards the north and east?

Answer. The Big mound stands in several rises of ground, the steepest and nearest being at the distance of one chain, 66 feet east of the mound; the second three chains, equal to 198 feet; and the third seven chains = 462 feet. On the north of the mound the second rise is at the distance of four chains and seventy-five links = 312½ feet; and the third near the ditch; and the first is three chains and twenty-five links = 214½ feet from the base of the mound.

Question. Have you ever devoted any attention to the ascertained location of the Esther and Brazeau's grants?

Answer. I have paid much attention.

Question. State whether those grants as laid down on the plot are correct, and are these located conformably to the grant in your opinion?

Answer. The Labeaume grant, the Chouteau grant, the Roy and Eglize grants, and others below are correctly drawn from the United States surveys; the grants to Brazeau and Esther are drawn according to their concessions, there being no former surveys either by Soulard or by the United States.

Question. Where is Brazeau's reservation of four by four arpents located with reference to the south ditch of Labaume; said reservation being made in the deed of Brazeau to Labeaume?

(Objected to by Magwire.)

Answer. Basing my surveys upon the location or position of the Labeaume ditches, I located the said reservation below the southern ditch of Labeaume.

Question. What are we to understand you to mean by basing your surveys upon Labeaume's ditch?

Answer. Brazeau having a concession of four by twenty arpents, he having received four by four taken off the south end of his concession, I find by measurement that the land between his ditches is a little over sixteen arpents in length, and I find that the north line of the United States and Spanish surveys of the Labeaume tract to be a continuation westward of the north and south ditches; necessarily the reservation being taken from the south end of the concession must be below the south ditch.

(That part of this answer is objected to in which he speaks of the contents of the deed to Labeaume or of the reservation in it by Magwire.)

Question. What does the line marked old road on the annexed plot represent?

Answer. It represents the position of the travelled road previous to the pulling down of the fences within the ditches, of which fences I have before spoken.

Question. State where the descent of land towards Rocky branch commences with reference to this old road?

Answer. It commences immediately at Labeaume's northern ditch and descends gently to a point near the northern line of the common fields of St. Louis, whence it descends abruptly to the banks of the creek.

Question. How far back can you recollect that the old road ran in that direction?

Answer. In the years 1833 and 1834, and down to the present time, there are traces of the road.

Question. What is the distance from the Half Moon to Roy's tower in a straight line?

Answer. Fifteen hundred and seventy-eight feet, English measure.

Question. Are the measurements herein given by you, given from your own actual admeasurements, or that of others?

Answer. From my own measurement on the ground.

And being cross-examined by the counsel for Magwire, said deponent saith as follows:

Question. When did you last survey the concession to Esther of four by twenty arpents spoken of by you?

Answer. In the fall of 1850.

Question. When did you last survey the confirmation to Pierre Chouteau?

Answer. In the winter of 1846 and '47.

Question. When did you last survey the concession to Joseph Brazeau of four by twenty arpents?

Answer. In the fall of 1850.

Question. When did you last survey the confirmation to Louis Labeaume, of which you have spoken?

Answer. I ran around the whole survey in 1848, and partially in 1850.

Question. When did you last survey the grants contiguous to the Esther concession on the south, to wit, Antoine Roy, Eglize Yoste, Soulard, and Clamorgan?

Answer. In the spring of 1851, this present year.

Question. At whose instance did you make the last survey of the Esther concession, of which you have spoken?

Answer. Partly at the request of Mr. Isaac H. Sturgeon, A. H. Evans, and Daniel D. Page.

Question. At whose instance did you make the last survey of which you have spoken, of the confirmation to Pierre Chouteau?

Answer. At the instance of Daniel D. Page and A. H. Evans.

Question. At whose instance did you make the survey of which you have spoken, of the concession of four by twenty arpents to Brazeau?

Answer. At that of I. H. Sturgeon.

Question. At whose instance did you make the last survey of which you spoke, of the confirmation to Labeaume?

Answer. At the instance of I. H. Sturgeon, Louis A. Labeaume, Wm. M. McPherson, and Col. John O'Fallon.

Question. Was map A, which is exhibited to you, and annexed to your deposition, constructed by you?

Answer. No; but it is a copy of one constructed by me.

Question. Where is the original map constructed by you, of which the one annexed is a copy?

Answer. I believe that it is now in the office of B. A. & D. W. Hill.

Question. Was the original map, of which you have spoken, constructed from the connected surveys made from your original field-notes?

Answer. It was.

Question. When was the original map, of which the one hereto annexed is a copy, constructed?

Answer. In the winter of 1850.

Question. At whose instance, and for whom, was that original map constructed?

Answer. It was constructed for myself; there was a copy of it made for Mr. Sturgeon.

Question. Did you make this copy?

Answer. I did not; I was requested to make it, but hadn't time.

Question. Have you compared the copy hereto annexed, and marked A., with the original, to ascertain whether it corresponds to the original in its representations and explanations, and in its lines?

Answer. I have; and it does agree in all, except that on the original I have given two locations to the confirmations to Brazeau and Esther.

Question. When did you make the comparison?

Answer. To-day.

Question. On the original map, of which you have spoken, and on which you say you made two different locations of the concessions to Esther and Brazeau, state how you made those two different locations on the original map.

Answer. On the original map one location represents the Esther concession as being bounded north by Labeaume's southern ditch; and the Brazeau concession as extending four arpents northward of Labeaume's northern ditch.

Question. In making the survey of the concession to Esther, from what data or calls was that survey made by you?

Answer. It was made from the petition and concession to Esther, and also the concession to Brazeau, assuming the northern ditch of Labeaume as being the northern line of the Brazeau concession.

Question. Were the petition and concession of which you have spoken, and from which you make those surveys, originals, or did they purport to be copies? and who furnished them to you?

Answer. I had seen and read the originals, and had certified copies furnished me by sundry persons.

Question. Upon what data did you make one of the locations of the Esther and Brazeau concessions, on the original map constructed by you, which brought the north line of the Esther concession to Labeaume's south ditch, and which extended the Brazeau concession four arpents north of Labeaume's north ditch?

Answer. I was instructed so to do by the parties to a suit in the Court of Common Pleas of St. Louis County, in the years 1846–7, in which suits Louis V. Bogy was plaintiff, and Clark & Childs, Dominic Childs, Thomas H. West, and —— Schoob alias Schoab, were parties defendant.

Question. Had you no data for making one of the locations in that way on the original map constructed by you except the instructions given you by the above named parties or some of them?

Answer. I had none.

Question. What does the line marked on the annexed plat, *a b*, running across the west end of the Labeaume confirmation, represent?

Answer. It represents the western boundary survey No. 2974, in the name of Louis Labeaume, as surveyed by the United States, in 1817.

Question. What does the line *g o* on the said plat, and west of the line on the said plat, and west of the line last named and marked *a b*, represent?

Answer. It represents the western boundary of Antoine Soulard's survey of the concession, made in 1799.

Question. Have you ever run the lines of the concession to Labeaume, according to the calls of the concession to him, with a view to determine its true western boundary according to the calls of the concession to him?

Answer. I have not.

Question. Can you state, from any survey made by you of the concession to Labeaume, which of the lines marked *g o* or *a b* is the true western line or western boundary of that concession?

Answer. I am of the opinion that the line *a b* is the true western boundary line, it being twenty arpents in depth from the river.

Question. Is the topography which is represented on map A. also represented on the original map constructed by you, of which the map A. purports to be a copy?

Answer. It is.

Question. Was the topography represented on map A. made from actual survey and observation on the ground, or merely from visual observation?

Answer. It was made from actual survey.

Question. Have you ever run the eastern line of the common field lots in the vicinity of the Grange de Terre?

Answer. I have, at various times.

Question. Does the line represented on the map A. by the letters *a b* and *c*, represent the eastern line of the common field lots of St. Louis according to your own survey?

Answer. It does.

Question. From what data or calls did you run line *a b* and *c*?

Answer. From the original concessions, and the surveys on record in the office of the surveyor-general.

Question. Have you ever traced, and do you know where is the line that Joseph C. Brown, late deputy United States surveyor, ran and laid down as the eastern boundary line of the St. Louis common field lots?

Answer. I do not know where it is. Mr. Brown never surveyed this line officially, to my knowledge.

Question. Is the Grange de Terre represented on map A. from a topographical survey, and if so, is it correctly represented?

Answer. It is represented from a topographical survey, but not very accurately represented on map A., being too far west on the map A.

Question. Can you state the distance between the eastern line of the common fields as laid down by you, and the western foot of the Grange de Terre?

Answer. This line passes immediately alongside the western base of the Grange de Terre.

Question. How many years is it since your attention was particularly directed to the topography of the Grange de Terre?

Answer. About twelve years.

Question. Was its topography at that time materially different from what it is at present? and if so, state the particulars in which it differs.

Answer. It was not materially different; the country then being open, and not incumbered by buildings and inclosures as it now is.

Question. When was your attention first particularly directed to what is called Labeaume's south ditch?

Answer. In the year 1839.

Question. What was the topography of the ground at that time in the immediate vicinity of the ditch, and did it not drain all the grounds in that vicinity?

Answer. The surrounding country was higher than the ditch, and the ditch served as an outlet or drain for the surface waters.

Question. Was the ditch familiarly called Labeaume's south ditch, made alongside of the hill on which La Grange de Terre stood, or was it made at the foot of the Grange de Terre?

Answer. It was made at the foot of the hill on which the Grange de Terre stands.

The further taking of these depositions is adjourned until to-morrow morning, at ten o'clock.

M. S. CERRE,
Clerk.

In pursuance of the adjournment, I resume the taking of these depositions, this 20th day of August, 1851, at the place and between the hours in the annexed notice named.

The cross-examination of William H. Cozens being resumed, deponent saith as follows:

Question. On map "A." there is a mark indicated by the words "Old Road;" describe its general direction from where it intersected a [and] crossed Rocky branch, to where it intersected what is now called Broadway, south of La Grange de Terre; and in your description of its general course aforesaid, describe it with reference to the present topography of the country, or the present streets or public highways.

Answer. The old travelled road (when I first knew it in 1833), from its crossing at the creek, bore a southwest course to the northwest corner of Labeaume's ditch. It then ran nearly parallel with the western ditch and inclosure, and between it and the high ground to the westward, as far as the southwestern course of the said ditch; it thence ascended on to the highland westward of Labeaume's brick residence, and passed immediately west of the Big mound. The position of the old road is nearly coincident with the present North Tenth street, being about seven hundred feet westward of Broadway. The present topography is generally the same as formerly, as in 1833.

Question. Is there any line on map A. designed to indicate a perpendicular line from the point where the old road descended in the creek called Rocky branch to the river? If so, point it out by appropriate letters of identity.

Answer. There is such a line; the dotted line indicated by the letters D. and K.

Question. In making a survey of Labeaume concession, following the calls of the concession to Labeaume, where would you begin to make such survey?

Answer. From the call of that concession, I would begin the survey at the point where the old road, above spoken of, descends into or crosses the creek.

Question. What is the distance from the perpendicular line indicated by the letters D. K., following the bank of the river, to Labeaume's south ditch; that is to say, how many arpents is it?

Answer. About twenty arpents.

Question. In making a survey of the concession to Joseph Brazeau, following the call thereof, where would you begin to make such survey? Indicate such beginning by proper letters on map "A."

Answer. I should make the foot of the hill on which stands La Grange de Terre my point of commencement, and survey northward towards the Rocky branch twenty arpents. I indicate the point of beginning by E., this point being the foot of the first or highest hill, on which stands the Grange de Terre.

Question. What are the words in the concession which induce you to make the point indicated by E., the starting-point of your survey?

Answer. The words are "qui commenceront au pied des coteau ou se trouve la sus ditto Grange de Terre," which I thus translate: "which commences at the foot of the hill where is found the above-mentioned Grange de Terre."

Question. Do you know if there was more than one concession of land in that vicinity to Joseph Brazeau?

Answer. I do not.

Question. What is the date of the concession from which you extract the words which you make the point of beginning of your survey at E′ on map "A."

Answer. The tenth day of June, 1794.

Question. If a survey was made of the last-named concession to Joseph Brazeau, according to the calls thereof, what quantity or number of arpents would such survey embrace?

Answer. Not more than twenty arpents in length, eighty arpents superficial.

Question. In the words you have extracted and made the point of beginning of your survey at E. on map "F.," have you not taken those words from the petition of Joseph Brazeau, instead of the concession to him?

Answer. I did take them from the petition, and not from the concession.

Question. In making a survey of the concession to Joseph Brazeau, according to the calls of such concession, explain on map "A." by appropriate indications where you would begin, and the courses and distances of the lines you would run, and the quantity or number of arpents in superficie such lines would inclose (a copy of said concession, &c., being hereto annexed, and marked B.).

Answer. The point of beginning according to the calls of said concession is very undetermined, it calling to begin at a point beyond the mound.

Question. At the time you made the surveys of the concessions of land in the vicinity of La Grange de Terre, or either of them, did you have before you either the original concession to Brazeau, or a copy thereof? If yea, state whether you followed or attempted to follow the calls of said concession?

Answer. I have already answered that question. I said then that I had seen the originals and had copies of them. I could not fix the starting-point on the concession, but made use of the calls in the petition of Joseph Brazeau.

Question. State whether you understand, speak, read and write the French anguage. If yea, take the words from the concession to Brazeau, in document B., "qui commenceront au dela de la moule nomme La Grange de Terre," and give your translation or interpretation into English of those words.

Answer. I both speak, read, write, and understand the French language, though imperfectly. I translate the above words thus: "which commences (at a point) beyond the mound called La Grange de Terre."

Question. If you cannot fix the starting-point of the calls in the concession to Brazeau, would it be possible for a surveyor to make an accurate survey of said concession according to its call?

Answer. If restricted to the description in the concession, it would not be possible.

Question. What is the distance from the point where the old road descended into or crossed Rocky branch at K., on map "A.," to Labeaume's south ditch at "C."

Answer. The distance is about twenty arpents, lineal measure.

Question. What is about the distance in arpents from C. in map A., at Labeaume's south ditch, to the apex or centre of the Grange de Terre?

Answer. It would be nearly five arpents.

Question. If you were to survey and cut four arpents in front off the south end of the concession to Brazeau, how many arpents would there be between the north line of such four arpents, and the perpendicular line B. K. on map A.?

Answer. About twenty arpents.

Question. Do you mean by your last answer that there would be about twenty arpents front on the river, without including the angle formed by Labeaume's north ditch, and the perpendicular line, *b k* in map *a*?

Answer. I do.

Question. In your direct examination you have spoken of a reservation in Brazeau's deed to Labeaume, of four by four arpents, in the vicinity of the Grange de Terre. State whether you know anything of such reservation, except what you have seen in copies of said deed.

Answer. I do not know, except from the calls in such deed.

Question. Have you not frequently surveyed the reservation of four by four arpents spoken of, and located the said four by four arpents north of Labeaume's south ditch?

Answer. I have frequently so surveyed and located it.

Question. Do you remember whether you have ever, at any time, surveyed and located it north of Labeaume's south ditch, for Martin Thomas?

Answer. I do. I so surveyed and located it for him in 1846.

The cross-examination on the part of the counsel for Magwire being concluded, the examination on the part of the petitioners was resumed as follows:

Question. Are you familiar with the language used in Spanish and French grants?

Answer. I am.

Question. Are not grants of that kind frequently made with no direct calls in the words of the grant, but merely referring to the land as described in the petition?

(Objected to by Magwire as growing out of the cross-examination.)

Answer. There are many such grants.

Question. Look at document "B." and the words of the concession to Brazeau, and see whether there is in that concession, besides the calls therein made, any reference to the petition, or to the order putting Brazeau in possession?

Answer. In the said concession I find these words—"Et aprés l'avoir mis lu possession nous mêines, suivant l'act que nous avons dressé cidevant le 10 du même mois, nous avous concédé et concedant au dit Sieur Joseph Brazeau," and also, the words "la portion de terre ci devant désigné consistait en la quantité de quatre arpens."

Question. In surveying a concession containing such words, if there was any ambiguity in the calls of the concession, would you go outside of the concession to find the land described or referred to in it, and if so, to what would you resort?

Answer. I would—to the petition and order of survey.

Question. State whether these many different surveys, previous to the present one, were made according to your own ideas of how the Brazeau concessions should be surveyed; or were they made in accordance with the requirements of parties who wished the Brazeau grant surveyed in a particular manner?

Answer. They were not surveyed according to my own opinions, but in accordance with the request of the parties desiring the survey to be made.

Question. In one of your answers to a question—your cross-examination—you stated that you should make the foot of the hill, on which stands La Grange de Terre, your point of commencement, and survey northward: now state the size of that hill, its position and elevation, its distance northward and eastward from the mound itself, and the general appearance and elevation of the surface of the country from that hill to Labeaume's south ditch.

Answer. The hill on which stands the Grange de Terre extends one chain eastward of the eastern base of the said Grange de Terre. This hill is on a level with the high lands adjacent to the Big mound, and is a distinct elevation projecting farther eastward than the general range of the ridge or bluff. It lies immediately east of the mound, gradually inclining in a northward and southward direction towards the west in the general range of the said ridge. It is, I think, about twelve feet in height, from its base to its highest point. From the base of the hill, the ground gradually descends towards the river and Labeaume's ditch.

Question. How should you survey a reservation made out of the concession to Brazeau in these words: "Se reservant le Sieur Bra-

zeau quatro arpents de terre a prendre au pied du monticule dans la partie sua de la dite terre?"

Answer. I would make the point E on plat "A," at the base of the hill, on which stands the mound, the place of commencing said survey.

The petitioners having concluded, the following examination was held by the counsel for Magwire.

Question. Where, on map "A," would you designate the point indicated by the words, "at the foot of the hill on which stands La Grange de Terre?"

Answer. Letter *e*.

Question. What would be the distance from the point indicated by *e*, on map "A," to the apex or centre of the Grange de Terre?

Answer. Nearly one arpent.

And further this deponent saith not.

WM. F. COZENS.

State of Missouri, County of St. Louis.

I, Michael S. Cerre, clerk of the Circuit Court within and for the county aforesaid, do hereby certify that William F. Cozens, the above deponent, whose place of residence is in the city of St. Louis, county and State aforesaid, was, on Monday, Tuesday and Wednesday, the 18th, 19th and 20th days of August, 1851, between the hours of eight o'clock in the forenoon and seven o'clock in the afternoon of those days, at the office of the clerk of said court, by me sworn to testify the whole truth of his knowledge touching the matters and things set forth in the annexed petition: that said deponent was examined, and his examination reduced to writing by me, and subscribed by said deponent in my presence, at the place and on the day and year, and between the hours aforesaid; and that said examination was by me distinctly read to him, and that he was duly sworn as to the truth of the depositions by him subscribed.

Witness my hand and the seal of said Circuit Court affixed at office, this twentieth day of August, 1851.

[SEAL.]

M. S. CERRE,
Clerk.

(For map, see original, page 134.)

Diagram showing the Spanish and United States surveys of Louis Labeaume, Pierre Chouteau, Antoine Roy, and those adjoining, and the position of the Spanish claims of Esther and Brazeau, each 4 by 20 arpents.

From the front line of the common field lots, at the north end of the Big mound, to the river, in a direct line, is 4 arpents, 127 French feet.

From the north end of the Big mound along front line of common fields to Labeaume's southern ditch is 4 arpents and 20 French feet. The quantity of land within the square made by the common fields line, Labeaume's southern ditch, the river, and a line drawn from the northern foot of the Big mound, parallel with said ditch to the river, is $22\frac{5}{100}$ acres, equal to $26\frac{45}{100}$ arpents.

The distance, on a straight line along the river, from the eastern end of Labeaume's southern ditch to the mouth of Rocky branch, is 25 arpents and 66 French feet.

The Big mound stands on several rises of ground, the steepest and nearest being at the distance of one chain, equal to 66 feet, east of the mound; the second, three chains, equal to 198 feet; and the third, seven chains, equal to 462 feet; and on the north of the mound, the first rise is at the distance of four chains, seventy-five links, equal to $312\frac{1}{2}$ feet, and the third near the ditch.

The Half-moon (Demi Lune) was situated on the foot of Cherry street, near south side; Roy's tower is situate north of the H. moon, at a distance of 1578 English feet; from the outer or nort ern wall or edge of the old Half-moon to the southern wall of Roy'. tower or wind-mill being 246 toises and 5 inches.

It is 362 feet from south line of Roy's tract to centre of his tower, and 382 from the northern line of his tract to centre of his tower.

From Labeaume's south ditch to Roy's south line is $22\frac{3}{4}$ arpents; from said ditch to the tower is 21 arpents.

The quantity of land between Labeaume's north ditch and the Rocky branch is, by careful admeasurement, $42\frac{3}{4}$ arpents.

Henry Peyroux's New Madrid location, under certificate No. 184, covered the reservation of Joseph Brazeau, and the other grants east of the line of the common fields and south of Labeaume's ditch.

Reference to the annexed plat of surveys—A, B, BC, CD, DE, EF, and FA. Survey No. 2974, Louis Labeaume's grant, and identical on all the lines, except the west line, with Soulard's survey of Spanish grant, 10th April, 1799. Said survey No. 2974 was made under the confirmation by the United States in 1817, and the recorder of land titles approved thereof, but excluded the Brazeau reservation from this tract, and this survey was then made identical with the first survey, except on the west line, and the Brazeau reservation was excluded, and placed south of the southern ditch of Labeaume, and running to the foot of the Big mound, according to Brazeau's petition and the reservation in his deed to Labeaume.

ae, *ef*, *fd*, *da*, Brazeau's 4 by 20 arpents. Grant made 25th June, 1794, on petition of 1st June same year, for 4 by 20 arpents, to be located beyond or immediately on the other side of the mound La Grange de Terre, and described in the grant as land extending 20 arpents in a N. N. W. direction, from the foot of the hill where the "Grange de Terre" is situated.

ab, bc, cd, da. Reservation by Brazeau of 4 by 4 arpents north of the foot of the mound La Grange de Terre; reserved in his deed to Labeaume of 9th May, 1798.

ag, gh, hd, da. Esther's concession of 4 by 20 arpents, 2d October, 1793; annulled in 1797, August 4, and never surveyed; described this tract as land situated at the north of St. Louis, and that the north part of the concession lay between the barn mound "La Grange de Terre" and the bank of the Mississippi; thence descending the said river as far as the complement and extent of 20 arpents in length.

l, s, p, q. United States survey, No. 671, for Peter Chouteau, 93 arpents and 1 perch.

i, k, m, n. The angle, containing $42\frac{75}{100}$ acres, formed by Rocky branch, Mississippi, and a line drawn from where the old road begins to descend into the Rocky branch perpendicular to the Mississippi.

g, o, i, k, m, n, r, g. Soulard's survey of Spanish concession to Labeaume of 374 arpents, made 10th April, 1799.

x. Big mound, "La Grange de Terre." *z.* Demi Lune or Half-moon. *x.* Roy's tower.

Cozzens' Testimony.

Witness said his recollection was better then than it is now. At that time, witness spent a great deal of time in examining the whole matter. Witness thinks that taking all his testimony and the facts, one with another, his deposition given in perpetuation before mentioned is more reliable, where it conflicts with his present testimony, than his statements now. Witness states that he observed an inconsistency in his statement then and now in this. When witness gave his said deposition, he located the four by four arpents reserved by Brazeau south of Labeaume's south ditch. If, however, the translations of the documents placed in my hands are correct, I must adhere to my statements given now.

The different opinions I have expressed were formed on different translations given me. When I testified in 1853, I took the foot of the mound, and where the road descends into the creek, as the starting-points. The translations of the different papers that have been placed in my hands at different times, are very dissimilar and unlike. One translation is, "to begin at the foot of the mound," and the other, "at a point beyond the foot of the hillock or mound."

The different opinions given by me have been in accordance with the different translations furnished me by the different parties. The map annexed to my deposition is a copy of one I made in some other case. The original was before me when I gave my testimony. The reservation of four by four arpents, in Brazeau's deed to Labeaume, is within the grant of four by twenty arpents conceded to Brazeau.

If Exhibit F, which is the concession of four by twenty arpents to

Brazeau, is a proper translation, there is plenty space between Labeaume's south ditch and the creek (Rocky branch) for the four by twenty arpents, assuming the starting-point to be where the road descends into the creek, which is where the road crosses the creek, and assuming, as I have said, that this exhibit be correctly translated, then the whole [474] arpents, surveyed for Labeaume's representatives, are north of Labeaume's south ditch.

On re-examination by plaintiff, witness stated that when he gave his deposition in perpetuation, he had copies of the original concessions of every tract of land in that vicinity before him. Witness understands the French language tolerably well. Can read French and translate it.

Bill of Exceptions.

The parties enter into the following stipulation in respect to testimony, which is filed with the papers in the case.

(For which stipulation, see pages 28, 29, of this transcript.—Clerk.)

Plaintiff then, under said stipulation, gave in evidence the testimony of N. F. Hyer, Augustus H. Evans, M. Lewis Clark, F. R. Conway and John B. Sarpy, from the report of the testimony taken and filed in the case of Magwire *v.* Vice, in Court of Common Pleas.

N. F. Heyer's Testimony.

Court of Common Pleas.

N. F. Heyer being sworn on behalf of plaintiff, says:

I am county surveyor of St. Louis county. I have practised surveying more or less some 20 or 30 years, since I was 16 years of age. I executed the order of survey in this case.

My report does not, perhaps, embody all the papers I had before me when I executed the order. It embodies all that I deemed essential, and, I think, all that I found it necessary to use in executing the order. When I first went on the ground, Mr. Magwire, the plaintiff, was present, and Mr. Sturgeon and Mr. File, who represented the defendants. I then had two orders in my hands, one from this court and one from the United States Court. Mr. Magwire represented the plaintiff in both cases. My report contains all the particulars of the survey that I or the parties deemed essential, and all that I can say about it. When I executed the order of survey, I had with me the documents indorsed on the back with the letters A., B., C., D., and E., in red ink, as mentioned in my report filed in this case February 26th, 1853. I caused the map mentioned in my report to be made. I located the 4 by 4 arpents as indicated on the map by request of plaintiff.

Question. Following the data you had before you, mentioned in

your report, state where on this map, in your judgment, the 4 by 4 arpents of Brazeau should be located.

(Objected to. Objection overruled.)

Answer. So far as I can understand it, taking the calls of the concession and all the different documents I had before me, they harmonize better where the 4 by 4 arpents of Brazeau are located, as represented on this map, bounded south by Labeaume's ditch. I ascertained the location of this lot sued for in this case. It is pointed out in my report. I have indicated Labeaume's north and west ditch for what was stated to me on the ground by both parties. The traces of the ditch are nearly gone, both on the north and on the south end. I relied principally on the statements of the parties who were with me. I found very few indications of the ditch on the south. There were indications of the ground having been disturbed, but I should not have been able to have laid it down as having been a ditch, had I not been informed that there had been a ditch there, and seen it laid down on maps. The shaded lines near the place marked "old road," indicate the brow of the hill. The ground there is rather rough and uneven. The three profiles on the map are laid down as taken on the ground itself.

Cross-examination.

Document B., being concession to Joseph Brazeau, is one of the papers I had before me in fixing the location of the Brazeau reservation. I don't know what particular paper created the Brazeau reservation, any further than is mentioned in my report. I think the deed from Brazeau to Labeaume is one of the papers fixing the reservation.

That paper fixed the reservation at the south end of the Brazeau 4 by 20 arpents. I don't recollect the language of that deed.

(Deed as translated by defendant shown witness.)

The foot of the mound is represented on the map by the outer edge of the dark shade marked "Big mound."

The deed shown me speaks of the "foot of the hill or mound," which, in my mind, are two different points. I can't locate them at the same point. Were I to commence at the foot of the mound, I should commence somewhere between the extreme eastern and the extreme northern foot of the dark shade. I don't think survey No. 3332, as laid down on the map, satisfied the call of the deed for the foot of the mound. It is neither at the foot of the mound or of the hill. Supposing the call of the deed for the foot of the mound to be the controlling call, I should commence somewhere at the foot of the mound or artificial embankment, and first lay off the 4 by 20 arpents of Brazeau, and then lay off the reservation at the southern end of the 4 by 20 arpents.

Question. Supposing you commence at the foot of the mound, where would you locate the whole tract?

Answer. The west line would run farther west than it is laid down on the map, until it got up towards the Rocky branch, when it would cross and fall east of it.

The Esther claim is more than four arpents wide. If I take the northern extremity of the mound at the starting-point, I could satisfy the call by running north to the Rocky branch. I do not know how it was first suggested to me that the foot of the hillock was the starting-point, and not the foot of the mound. Mr. Magwire has at various times held arguments with me in presence of Mr. File, and at other times, explaining the thing to me as he wished it represented on the plat. I examined the documents laid before me, and from thence came to the conclusion which I have laid down on the map. Taking the deed from Brazeau to Labeaume alone, I could not properly locate the ground unless the country remained unchanged by improvements. I have been surveying since the year 1849. I came here ten years since, and resided here some two years in the surveyor-general's office. I then went away, and returned in the spring of 1849. I never made any previous survey of this ground. I could not properly locate the reservation by the deed from Brazeau to Labeaume alone, independent of all the other information I possess on the subject.

Question. Can you locate the land thus described which consists of 4 arpents of land to be taken from the foot of the hillock or mound from the call La Grange de Terre by 20 arpents in depth, bounded by the Rocky branch at the extremity, which is opposite, east by the Mississippi river, and west by the king's domain, the said Brazeau reserving for himself four arpents of land from the foot of the mound in the south part of the tract?

Answer. In that case I should commence at the extreme northern base of the artificial mound, and continue up to where a line parallel with the line forming the south boundary of the tract would strike the Rocky branch when produced. The line forming the southern boundary would be a straight line from the mound to the river. I should then locate the reservation at the southern extremity of the 4 by 20 arpents so located. Roy's tower is about at the point marked "T." in pencil on the map.

Esther's claim runs into the Roy tract about an arpent and a half, when located as shown on the map by the blue lines. Distances can be ascertained from the scale on the map.

I think I had Soulard's survey of the Labeaume tract before me when I made my survey.

Upon my hypothesis, the north dotted line on the map would be the north boundary of the Brazeau tract—and the south dotted line is 16 arpents south of the north dotted line. The location of the Soulard survey is represented by the closed black line, and includes the four by four arpents as claimed by plaintiff. The north and south ditches are as marked on the map, the pale blue shading re-

presents a sandbank. From the appearance of the ground, I judge the bank of the river used to be about where west edge of this shading is. If I were to locate the Esther claim so as to cover the whole of Roy's tract, the northern boundary would be about midway between the north boundary, as shown on the map and the mound.

Question. Suppose the description of the Esther grant to be the following, "the north part of the present concession shall be situated between the hillock called La Grange de Terre and the banks of the Mississippi, then descending the said river as far as the complement of 20 arpents in length," having no other description as a starting-point; the tract to be 20 arpents long, and no longer, and four arpents in width, with nothing to interfere on the north and south as to location, where would you locate the tract as a surveyor?

Answer. I should take a point at the mound and run up five arpents above the centre of the mound, and take that as the starting-point, and then run around. It is my judgment from looking at the map, that locating the Esther claim so that it would cover the whole of Roy's, the end boundary would be about halfway between the mound and the end boundary as shown on the map.

Question. Would it not be more definite in the case supposed, of Esther's claim covering Roy's tract, to put the north line of the concession between the north foot of the mound and the Mississippi side, so as to have the north part of the tract, to the extent of the length of the mound, between the mound and the Mississippi, and thence from the end line descending 20 arpents for the complement?

Answer. In my opinion it would not be so conformable to the description. In my opinion it would be more definite to place the north line halfway between the mound and the end boundary, according to my hypothesis, than to place it running from the north foot of the mound to the river. The reason is, that if it had been intended to commence at the mound, it would have been so easy to have stated it.

Question. Is that part north of the mound the northern part of Esther's concession or not?

Answer. It is a portion of what I understand to be the northern part of the tract; that portion lies between the mound and the river by parallel lines.

Question. Do I understand you to say that the part of the concession north of the north foot of the mound is between the mound and the river?

Answer. Detached from the rest of the tract, I should not call it between the mound and the river, but connected with the rest of the tract, I should say it was.

Re-examination.

The foot of the hill on which the mound stands is not at present so easily ascertained, as it was formerly, from appearances.

The foot of the hill, or slope, is precisely at the point where I have fixed the southwest corner of the 4 by 4 arpents. There are no houses on the 4 by 4 arpents, but on adjoining grounds.

By improvements, I meant the grading and buildings on Broadway. I made a survey, and took the level of the ground, in order to determine where the termination of the descent was. I might have placed it a little differently, one way or the other, if I had not found it placed there before. I located the different tracts so as to make them all harmonize; had I located either one by itself, I might have located it differently by taking them altogether. This map seems to me the most consistent way of locating. I took for the starting-point of my survey the intersection of Roy's north line with the curbstone, on the east side of Main street, which point I ascertained by running myself the north line of Roy's survey from Broadway to the river. There is a very large stone put west of Second street, and south of Ashley, which is set there as the northwest corner of Roy, as I have been told by old surveyors, and as I have proved by running the line from other points given. I can't say whether that is a Spanish corner or not, but I suppose so, because it looks like a very old stone, and I have never heard it questioned. I don't know that I found any other corner that was supposed to be a Spanish corner; I think there was another pointed out to me, at a point 10 chains 50 links south of the bridge. I have a vague recollection that I examined the stone, and that it looked very old, and was worn smooth. I didn't dig around it.

In answer to question by juror, an arpent, in length, is something like 192 feet. In answer to question by court, Labeaume's ditch has, in all the surveys, I believe, been considered the southern line of the Labeaume tract.

By Mr. Hill. There is a bluff extending all along up past the mound, and thence on in a northwest direction; and from this bluff there are similar slopes to the one from the mound, to the southwest corner of the 4 by 4 arpents, as laid down by me.

A. H. Evans' Testimony.

Augustus H. Evans, sworn on behalf of the plaintiff.

I came to St. Louis in 1817. I followed merchandising here and in the Boonslick country until 1822, when I came to St. Louis to reside. I learned practical surveying when I was ten or twelve years of age. I was employed in the surveyor-general's office fourteen or fifteen years, from 1822 to 1836, and I have been employed to survey public lands and private claims. I ascertained and ran the lines of the Roy, Esther, Brazeau, Chouteau, and Labeaume grants in north St. Louis.

I surveyed from the Spanish grants, and nothing else; I was some two or three years at it. It was soon after McRae (McRae)

came into office as surveyor-general. I had no particular authority for making them. There was an application by Strother to McRae for a survey of the Brazeau 4 by 4 arpents. McRae was then new in the office. I think I finished the surveys in 1826 or 1827. I don't know that I could tell where I began. I began at various points at different times. I located the different claims as they are laid down on Hyer's map, except that on my map the northwest corner of the Brazeau 4 by 20 arpents came up nearer to where the old road crosses the creek, than it is laid down on Hyer's map. The whole west line ran a little further west on my map. The variation of the compass would not make this difference. The expression in the old grant is "to take from and begin at the descent of the road into the creek;" and my conclusion from that was, that the northwest corner which I took was the correct corner of Brazeau's grant. I located the reservation of 4 by 4 arpents in the southern part of the tract, north of Labeaume's ditch, and bounded south by it. At that time I could plainly trace Labeaume's ditch. None of those ditches conformed to Brazeau's grant but the southern.

The west ditch was west of Brazeau's west line, and the north ditch south of his north line. The north and south ditches were about 16 arpents apart. The west ditch ran parallel to the bluff, and the road was between the bluff and the ditch. It didn't run parallel to the river. It was in some places five arpents from the river. I never computed the area within the ditches. The south ditch extended west of Brazeau's west line; I couldn't say how far, say a 100 or 200 feet. There were then two corners of Roy's claim standing prominently, the northwest and southwest, also the southwest corner of Chouteau. The northwest corner of Roy is still standing. The corners were indicated by large stones. At the Chouteau southwest corner a large stone was standing right at the road side, then called Bellefontaine, now Broadway. The old Bellefontaine didn't run exactly where Broadway now does, it ran east of it. It ran close up to the mound, in the Eglize tract. I should suppose Second street ran pretty near, perhaps a little east of the northwest corner of Roy. I was on the ground at the time the Nash case was tried, and dug up the southwest corner of Chouteau tract. At the same time we went to Roy's corner. Liffingwell and Green were with me. I heard Mr. Hyer testify yesterday. The stone spoken of by him as the northwest corner of Roy, is the same stone spoken of by me. When I first came to the country, I observed the topography of the country around the Big mound. I went on to the mound the first Sunday after I came to the State, in 1816. At that time a stone wall ran along right on the top of the mound. There were then no houses. Major Christy's house was nearly half a mile north of the mound, and was the only house in that vicinity. His house was nearer the river than to the Bellefontaine road. As well as I remember, there was nothing to fix the

location of the Esther claim, except the map of Trudeau on the grant. That map seemed to fix the north part of Esther rather beyond the mound, and between the mound and the river. Then I ascertained from Roy's grant the interference of Roy and Esther. Then, by measurement from the interference of Roy and Esther to the Rocky branch, gave the quantity claimed by Roy and Esther. Then measuring from where I supposed Esther began in Roy, the north line of the Esther claim fell upon the ditch, as the Roy and [Brazeau and] Esther grants were each 20 arpents in length. That corresponded, as I thought, with the expression in the Brazeau grant, "commencing at the foot of the hill on which stands the mound," and with the expression in Labeaume's grant, of the descent of the road into the creek by the perpendicular to the Mississippi. That makes a triangle, of which the perpendicular is one side, the river one, and Rocky branch the other. The perpendicular began west of the bridge. The "old road" ran about where it is indicated on the map, a little west of the present bridge.

(Esther concession shown witness.)

In making those surveys, the grants of every one of the claims were before me, including the Esther grant. Whenever I say "grants," I mean Spanish grants. I have computed the quantity in the triangle, but don't recollect it. The creek is so crooked that the quantity couldn't be guessed at. I surveyed the creek by the meanders on the bank. Esther washed for me many years. I think I have seen the Esther concession, now shown me, in the hands of Esther. It was either this or a copy that I got to locate the mound by. Don't read French. I have seen a great deal of Trudeau's handwriting, signatures to grants, &c. I have been present several times when his writing has been proved in court. I have heard Pascal, Cerre, Leduc, Caddy, Chouteau, Zenon, and a number of them, swear to his handwriting.

Question. From signatures of Zenon Trudeau which you have seen proved in judicial proceedings, upon official papers purporting to have been by him signed, state whether, in your opinion, the signature of Zenon Trudeau to the document shown you is his genuine signature.

(Objected to by defendants. Question withdrawn.)

The southwest corner of the Brazeau grant on the map is about where I put it, from appearance; it is at the foot of the hill on which the mound stands. The foot of the mound is at the northern extremity of the dark shading on the map. The south side of Brooklyn street just cuts the north foot of the mound. The ground was then in a state of nature—no houses—no timber. Mullanphy had a house as stated. There was some brush in sight, but no woods; since then there has been a change in the banks of the river generally by accretion. There is a considerable accretion at the north end of the Brazeau four by twenty arpents; not much change in the banks opposite

the four by four. It is a rocky shore all the way from the south end of Esther to the north end of the Brazeau four by twenty. The country all along Rocky branch is rough, ravines running into it, &c. The creek is in a deep bed; bank high until you come to the natural bridge. All the ground in the Labeaume tract west of the dotted line lies high and well. A peculiar feature of all the country about St. Louis is that it is full of sink-holes; that is the case with this country.

Cross-examined.

The country west of the ridge on which the mound stands is level prairie; as level as the country generally. The ridge is the same one which extends from Chouteau's mill-creek all along up past the court-house to the mound which stands on the brow of it, and there runs off towards the northwest, and then turns again down toward's Brazean's northwest corner, so as to form a sort of horseshoe. This ridge or hill divides the prairie from the bottom land. The foot of this hill is all around the slope or ridge. Every part of the mound was made. I once computed the quantity of earth taken from the hill where the mound came from. The spur or apron of the mound running east towards the river was also built by the earth being carried there. Have seen men dig into mound; a hole on the east side; nothing there but yellow dirt. The stone wall on top of the mound is said always to have been there. There were other mounds on this ridge, some on the brow, and some back of it. There were many thousand cubic yards of earth in the mound; the earth was taken from just across Broadway. I suppose there were twenty mounds there in a cluster, none of them more than one hundred yards apart. The old "Half Moon" was put at the end of Cherry street—south side of Cherry street; I think the street now runs over it; that was an old Spanish fortification. Roy's tower was intended to be in the centre of his grant, but it did not actually stand in the centre; it stood nearer the river than to his west line. Can't recollect the distance from the "Half Moon" to Roy's tower. If you commence at the creek and locate Brazeau and then Esther, Esther won't come to Roy's tower. Roy's tower is south of Esther's south line; can't say how far. Can't say whether Roy's tower was the oldest erection on Roy's tract or not. As well as I recollect, when I came here there were old and poor houses and stabling all around the tower. There were no houses within Esther's claim as laid down by me. There was no other "half moon" in the north part of town. The Bastion, as it was called, stood down near the City Hotel—Rector's old house. Labeaume had an orchard fenced in back of and above his house. I don't think there was any fence standing on the south ditch when I first went on to the mound; there was a fence back of it inclosing Maj. Christy. The Bellefontaine road ran just west of the west ditch, and close to it. The south ditch, in 1837, was may-

be two feet deep and three feet high; the dirt was thrown out and formed a sort of embankment. The north ditch was of the same kind; they all seemed to be on the same plan. Maj. Christy had, in 1817, inclosed a part of the tract between the ditches. The south end of the tracts were not in possession of any one. There was no one on the tract but Maj. Christy and those who married into his family, who lived with him. Maj. Christy had an inclosure in Christy's addition, where he pastured his cattle; there was a road leading along up the river past Maj. Christy's house around to the Bellefontaine road. Strother knew nothing about the surveys made by me until they were done. Col. McRae was applied to by Strother for an order of survey, and McRae being a French scholar, translated all these documents. I have been interested in New Madrid certificate No. 184; it was located by Barcroft and Rector, extending south from Labeaume's ditch, not under my directions. I don't think I was interested in it when I commenced making the survey. Never had any interest in the Esther claim. I ran Chouteau's north line to the ditch also. I find the Brazeau reservation by using all the Spanish grants that bounded it in any way,—Roy, Chouteau, Esther, Brazeau, and Labeaume.

Question. Make the location of the reservation on this description: consisting of 4 arpents of land, to commence from the foot of the hillock or mound commonly called La Grange de Terre, by 20 arpents in length, bounded by the Rocky branch at the extremity which is opposite to the said mound, E. by the Mississippi river, and W. by the king's domain; the said M. Brazeau reserving 4 arpents of land for himself, to be taken at the foot of the mound in the S. part of the said tract. Upon that description alone locate the reservation.

Answer. I should begin right at the foot of the mound at Brooklyn street, as he says. In surveying it is customary to take the beginning named in the paper; but starting from the foot of the mound, you would never reach the creek with your 20 arpents. Taking that beginning, the west line of the Brazeau tract would fall away west of where it is on the map, and the whole tract would contain more than 80 arpents and more than 120 arpents. It is more common for Spanish grants to overrun than underrun. Major Christy lived and died within the boundary of the ditches. I think he died there some ten or twelve years ago.

Re-examined.

(Plaintiff's counsel reads to witness a translation of Brazeau's deed to Labeaume; also concession to Brazeau.)

Question. Taking these two documents together, how is the Brazeau 4 by 20 arpents to be located? Where would you begin?

Answer. I would begin at the foot of the hill on which the mound stands, and run north to the neighborhood of Rocky branch, as laid down on the map. Beginning at the foot of the mound, and run-

ning N. N. W., you could not locate the lands so as to harmonize with a single call in the grant. I think in that case the west line would run west of Labeaume west ditch, but am not certain. Christy's fence was north of Labeaume's south ditch, and north of the N. line of the 4 by 4 arpents, but can't say how far. The fence was not far from the house—much closer to his house on the S. than on the N. It was about half a mile from the mound to Christy's house.

If Labeaume's west ditch is correctly laid down on Heyer's map, by applying the rule, I see that the west line, beginning at the mound, would come a little E. of the ditch.

M. Lewis Clark's Testimony.

M. Lewis Clark, being sworn, on behalf of plaintiff, says: I was born in St. Louis, 43 years ago, and have resided here ever since, except when away at school. I am an engineer by profession, and was recently surveyor-general of this district. I was surveyor-general from July 1st, 1849, to January 1st, 1853. Am acquainted with the topography of the country in vicinity of Big mound; I recollect it back about 30 years. Broadway was opened under an act of legislature in 1838. The court ordered it to be opened, and Mr. De Ward made the survey. I was with him when he did it. My attention has been called to the topography of the ground in the immediate vicinity of Big mound. When I first knew the country, it was open and unoccupied except in some few places. The mound stood upon a low ridge, leading from immediately north of it to one or two squares south, nearly parallel to Broadway. The ridge was on the brow of a bluff which forms the second bank of the river, and upon the projecting point of which the mound stood; the first plateau or bottom widening north and south of it being under west of the mound itself. I am acquainted with surveying—topographical as well as plain. I have examined the southeast and southwest corners of Chouteau's claim, the northwest corner of Roy, the southeast corner of the Labeaume tract, as surveyed in public survey No. 3332, I think—indeed, I have examined all the corners of the Labeaume tract. It was in 1838 and 1839 that I examined the corners of the Chouteau claim, and of the Labeaume tract in 1841. The northwest corner of Roy was a stone east of a little mound and not far from the west edge of either Main or Second street. The southwest corner of Chouteau was a stone on the side of a mound—I think near the foot—situated between Broadway and Second, north of Biddle, upon which Peter Brook's house now stands. The southwest corner, as laid down on the map of the Chouteau tract, looks as if it was correct. The location of the mound is about correct, but not the topography. The south boundary of the Labeaume tract, as laid down on the map, seems to be about the line of the

ditch when I examined it. Dobbin's house was perhaps about 10 arpents back from the river.

(Witness is shown Brazeau's deed to Labeaume, and the petition and concession to Brazeau.)

Taking these papers alone, I would locate the 4 by 20 arpents commencing at the foot of the hill where water would stop, and then I would run in the designated direction until I came to the designated point near Rocky branch; thence to the river by the calls of the grant. I would run north 20 arpents, more or less, to the point designated. I have seen Labeaume's south ditch on the ground. I first knew it about 33 years ago. I recollect it from a circumstance that occurred in my early boyhood. The ditch is about at the foot of the hill or ridge on which the mound stands. The point at which water would stop may be a little north of the ditch. I should, as a topographist, place the foot of the hill just about where the ditch was. I should do that from an expression in the grant, "commencing beyond the mound;" supposing this means beyond with reference to the old town of St. Louis, which was some distance south of the mound. The north part of the hill seems to be correctly represented on the map, but not the rest of it; it is made too round. Assuming the southwest corner of the Labeaume tract, near "D," as laid down on the map to be correct, it corresponds, as far I know, with the call for it in the grant.

(The papers purporting to be the original concession from Trudeau to Esther shown witness.)

I do not see how you could locate the Esther claim from this paper alone very definitely. If you take the figurative plat as a survey, it could be done; but it does not purport to be a survey. To locate it properly, we should want to know something about the south boundary. The only way in which it can be located is to take the interference with the Roy claim into consideration. I think Mr. Evans' method of treating it is the only one by which we can come to any definite understanding as to its proper location. In giving this opinion, I also take into consideration that the grants above call for Esther as bounding them on the south.

Cross-examination.

As early as I can first recollect, Major Christy resided on the tract between the north and south ditches. No one else, that I recollect. Major Christy I think resided there some 30 years ago. I was on his place many times when a boy. The ditch was, I suppose, 3 feet high above the level, and 2 feet deep. I entered the plantation somewhere about where Second street ran. The road took a line to the west from Main street, going into a lane. The road crossed the ditch about where Main street is. There was an inclosure about his house, and another between the house and river; and

the land ran between them. Major Christy lived there until he died, I think. After his death his widow lived there until she died, three or four years ago, but not in the same house; she lived in a stone house built on the same block. Wm. Chambers, Thomas Wright, and Wm. Christy claimed the whole Labeaume tract, as I have always heard. It is 23 years since I first knew of the occupation of Thomas Wright. The first fence I know of, said to have been, and believed by me to have been made by him, was in 1840. I have seen Chambers at Christy's house since I can first recollect; have seen him going about the land, looking around, &c.

I was a commissioner to make partition of Wright's estate in about 1840. Before that there was no fence on the southwest part of the Labeaume tract. I saw Col. Chambers a short time before it was known he was dead, about five or six years ago; I saw him about the land from my earliest recollection up to a short time before his death; he was then exercising ownership when we divided Wright's estate in about 1840. I knew P. Chouteau, Sr., from my earliest recollection; he died some three or four years ago; he resided on Main street, in the block opposite the Bank of Missouri.

(Deed from Brazeau to Labeaume shown witness.)

Question. Locate the reservation from its description in the deed now shown you, without reference to anything else.

Answer. I should not be able to locate it from that description alone, without reference to something else. The foot of the mound is all around it, and you could just as well locate it at the south foot or west foot as the north foot; I could locate it at either foot of the mound. In locating the four by twenty arpents by the description "commencing at the hill or mound," you could commence at either the foot of the hill or mound. What I understand by the hill is the elevation above the general surface of the ground on the base of the ridge. The ridge is elevated more at that point than anywhere else for a half mile south or west of it by twenty feet. It is not higher than the Grand Prairie. The foot of the hill apparent without reference to accurate measurement is near Main street, at the bottom of the ridge where the first plateau becomes narrowest. The southwest corner of survey No. 3332, as laid down on the map, might be taken as the foot of one of the steeper declivities; I think the second. In ordinary language I should take the foot of a mountain or of a hill to be the line of intersection of the steeper side with the plane of the general surface of the country. Survey No. 3332 was made by General Milburn under my directions, and under instructions from which I had no discretion to deviate.

Re-examination.

The south fence of Christy's inclosure, of which I have spoken, was somewhere between Madison and Jefferson streets. All the

inclosure that I recollect of was north of that fence. There were two powder-houses below, but I don't know whether on this tract or not. I know that the space between the powder-houses and Christy's fence was open. I know the troops camped there once. I hunted on the space.

By the court.

The interference of Roy with Esther was ascertained by reference to some documents; I don't recollect what one.

F. R. Conway's testimony.

F. R. Conway being sworn on behalf of plaintiff says:

I have resided in St. Louis generally since November, 1818. I began as clerk in the surveyor-general's office in this district in 1819. Wm. Rector was then surveyor-general.

I have studied and practised surveying. The first experience I had in surveying was in the latter part of 1819 to the fall of 1829. I was out surveying on several trips. I was appointed recorder of land titles in this district in 1830, and held the office near fifteen years. I was one of the commissioners to act on land titles in 1832. The recorder of land titles was ex-officio one of the commissioners. I was appointed surveyor-general in 1845, and held that office until 1849. I am not acquainted with the localities in the vicinity of the mound from having been on the ground. All I know about it is from documents in the surveyor-general's office. While I was surveyor-general, probably in 1846, '47, or '48, instructions were received from the General Land Office for me to examine into the matter, and report as to the location of the reservation, and of the Esther claim, as they were to be bounded by each other. These instructions were prompted by an application from Gustavus A. Bird, addressed to the commissioner of the General Land Office, who was interested in the Esther claim. I then examined into all adjoining claims that I thought might throw any light on the true location of the Brazeau and Esther claims.

I examined that of Antoine Roy, Esther, Chouteau, Brazeau, and Labeaume, and perhaps others that I don't recollect. I did not direct any survey to be made. I was not authorized so to do, but only to examine and report my opinion from surveys already made. I also inquired of surveyors, Joseph C. Brown and Rene Paul. I believe Mr. Paul had surveyed all those tracts; he appeared familiar with the surface of the ground and the localities. I have been past the mound often, and rode up on to it when I first came to the country. I recollect the west ditch, but don't recollect then to have noticed the south ditch. I never was on the ground with a surveyor who pointed out the stones. I have seen corner-stones, but never knew what particular tracts they bounded.

(Witness is shown concession to Brazeau and concession to Esther.)

Question. Examine the papers now shown to you, and state how, as a surveyor, following the descriptions and calls of those grants, and from all your personal knowledge of the locations in that vicinity, you would locate the four by twenty arpents conceded to Brazeau?

(Objected to by defendants, because witness states he was never on the ground with view to examination.)

(Objection sustained by the court.)

Question. Examine the petition and concession to Esther, and the petition and concession to Brazeau, and state how you would, as a surveyor, in following the descriptions and calls in those grants, and from facts within your personal knowledge, and from the official Spanish grants of land spoken of by you above, in the vicinity of the Big mound, locate the concession of four by twenty arpents to Brazeau?

(Objected to as asking witness's opinion upon the documents, and incompetent.)

(Objection overruled—excepted to.)

Answer. If the ground was such as to justify it, that is, if the foot of the hill on which the mound stands was four arpents from the river, I should commence there. That point would also be governed in some respects by the north boundary of the Esther claim. And then I should extend the west boundary in a northerly direction parallel with the Mississippi river twenty arpents, then east to the river parallel with the south boundary, then down the river twenty arpents, and then four arpents to the beginning. When I speak of parallel to the river, I mean parallel to the general course of the river, and not of its meanders. Whether I should make the north and south lines parallel to the general course of the river and not of its meanders, whether I should make the north and south lines parallel to the west boundary would depend on the course of the north boundary of the Esther. I have never examined the ground or corners on the ground in connection with the surveys, all I know about the matter is from the plats and descriptions of surveys before me in the surveyor-general's office. I have examined all those surveys, and caused a connected plat of them to be made, which was contained in my report to the General Land Office.

From my knowledge, as a surveyor, and from official documents I have examined, I should think the map before the jury was a correct representation of the location of the different tracts; the four by four arpents being north of Labeaume's ditch.

(Plaintiff shows witness a copy of communication addressed by the surveyor-general to the recorder of land titles, dated 9th March, 1833, and of General Conway's reply to same, marked No. 21 and 22; also a survey of Joseph C. Brown, dated Nov., 1817, marked No. 20, supposed to be referred to in communication of surveyor-general to it. For aforesaid communication, dated 9th March, 1833,

and of General Conway's reply to same; also for survey of Joseph C. Brown, dated November, 1817.)

The heading of the survey now shown me, according to my recollection, corresponds with the one presented to me as recorder of *land titles, by William Chambers, for a patent certificate.* I indorsed on the back of it my objections to issue a patent certificate, because it comprised two surveys in one. I acted officially in refusing to issue it. Shortly after I received a letter from the surveyor-general calling on me to state my reasons officially for refusing to issue it. The paper marked No. 21 " purports to be a copy of the letter, and I believe is a copy. I gave my reasons in writing, and paper marked No. 22" is a copy of my reply.

(Plaintiff reads in evidence papers marked No. 21 and 22.)

I had very little conversation with Col. Chambers when I refused to issue patent certificate. He didn't say much. Can't recollect his words; made no remark that made any impression on my mind, except that he had no objection to a re-survey; he only wanted his patent. The only thing that induced me to refuse to issue patent certificate was the statement at the head of the survey that it was the Brazeau tract. I then had no connected plat in the office by which to determine whether the survey was correct or not. I suppose that it was that winter or the next year that Mr. Chambers applied again on a subsequent survey. He made some objection to the second survey of Joseph C. Brown, deputy U. S. surveyor, because it did not call for the river as he thought it ought to have done.

There was no conversation between Chambers and myself as to where the reservation of four by four arpents was cut off by the second survey. When the second survey was presented I did not know that the south boundary was identical with the first survey on which I refused to issue a patent, or I should not have issued upon it. When I issued on the second survey I supposed that it had cut off the reservation of four by four arpents which were included in the survey of 1817. I afterwards learned that the excess of Labeaume's survey was thrown off on the west, and the south boundary was identical with that of 1817. I didn't recollect ever to have had any conversation with Col. Chambers about the location of the reservation until I was called on by the commissioner of the General Land Office, when I was surveyor-general, to report as before stated. Certificate 1161, I think, was cancelled on account of Col. Chambers' dissatisfaction with the survey. The south boundary had nothing to do with the cancellation, because I did not then know that the reservation had been cut off south of the ditch.

Cross-examined.

Defendant shows witness a survey marked No. 23, being survey No. 2974.

The last patent certificate issued by me was issued on this survey, I presume. The length of the south boundary of the Labeaume tract, by the first survey Nos. 982 and 983, was 63 chains 60 links, by the second survey 60 chains 82 links; the excess, being 2 chains 78 links, was thrown on off on west.

The courses on the two surveys are the same. I did not know that this excess had been thrown off on the west until I came to compare the two.

I have examined the Soulard survey.

I can't recollect whether I examined it on issuing the patent certificate.

I did not examine it critically so as to compare the courses and distances. The Soulard survey was then on record in the office. I had examined often and was familiar with its general outlines, but not with its courses and distances.

(Soulard's survey shown witness.)

It is my opinion that there was something like 374 arpents in the Soulard survey of the Labeaume claim. There is a general resemblance in the appearance of the Soulard survey and of the U. S. survey. I never have examined the monuments on the ground. It is my impression that the ditch formed a part of the south boundary of the Soulard survey. I have frequently been at Major Christy's house. The road leading to his house ran close to the mound, and then descended the hill near to the river, and then ran along up east of the house. I never noticed the south ditch in going to Christy's house. I first noticed the ditch perhaps 20 years ago; it then had the appearance of being an ancient ditch; there was a swell or embankment on one side of it.

Question. Do you know who exercised acts of ownership and control over and possessed the tract of land between the southern, western and northern ditches and the river?

Answer. I knew who possessed part of it; Major Christy was in possession, and the only one I know of in possession of any part of the tract between the ditches. I don't know whether he claimed to the south ditch or not.

Re-examined.

I don't know whether the ground in the vicinity of the Big mound had been laid off in city lots or not when I first came here.

Jno. B. Sarpy's Testimony.

Mr. John B. Sarpy, sworn on behalf of defendants [plaintiffs], says, I am past 50 years old; was born in St. Louis, and have lived here since; I knew Pierre Chouteau, Sr., from my earliest recollection up to his death; was intimate with him and family. Mr. Chouteau was the uncle of my mother. Old Mr. Chouteau was in the fur

business. Chouteau and Berthold raised me; I was intimate with Mr. Chouteau's business. I knew of old Mr. Chouteau owning property near the Big mound. In 1821 or 1822 heard there was a sale of land belonging to old man Chouteau to his son, Aug. P. Chouteau.

I knew of this sale after it had taken place.

The last sale by Chouteau, Sr., after the sale to his son, of land up near Big mound, was made to Strother, in 1825 or 6. This was all his land up there. All lands, in those early times, were used by everybody for wood, grass, and water, &c.; land was very cheap. Mr. Chouteau was considered a father here in those times, and the people used his property freely, as children would use their father's.

Cross-examined.

I understood that old Mr. Chouteau did some surveying in early times here; he was considered a very intelligent man, and was acquainted with the bounds of the different surveys about St. Louis.

Bill of Exceptions.

Agreement as to using map by N. F. Hyer.

Bill of exceptions.

It was admitted that the large map used before the court on this trial was made by N. F. Hyer; and it agreed that the same map which has N. F. Hyer's name upon it may be used in the Supreme Court without being copied into this record.

Record of, in case of Pierre Chouteau *v.* Wm. Christy, in St. Louis Circuit Court.

Plaintiff gave in evidence the record in the suit of Pierre Chouteau *v.* Wm. Christy, in the St. Louis Circuit Court, as follows:

In the St. Louis Circuit Court, June Term, 1823.

PIERRE CHOUTEAU
v.
WILLIAM CHRISTY. } Ejectment.

Declaration, filed May 4th, 1823.

On the time the plaintiff failed to produce the original deed from Brazeau to Labeaume a copy was offered, which not being properly authenticated, was excluded as evidence, and a not sent taken.

Bill of Exceptions.

PIERRE CHOUTEAU
v.
WILLIAM CHRISTY. }

Be it remembered, that on the trial of this cause, the plaintiff read

in evidence the following certificate of survey (here insert the concession to Brazeau, the concession to Esther, the concession to Chouteau, and the concession to Labeaume). The plaintiff then read in evidence the following confirmation to Labeaume and Brazeau, together with a copy of the proceedings of the commissioner of land titles thereupon. (Here insert the same.) The plaintiff then gave in evidence a *a* deed from Brazeau to Labeaume, and a deed from Brazeau to Chouteau, which here follow. (Here insert the same.) The plaintiff then proved that the southern ditch, in the said Labeaume's survey represented, is about four arpents distant from the said Grange de Terre; that the northern ditch is sixteen arpents distant from the southern ditch; and that the point, the Rouisseau de Pierre, which is nearest the southern ditch, is about twenty arpents therefrom; the plaintiff further proved that a short time previous to the commencement of this suit, while the said Chouteau was surveying the tract of land within the said ditches, containing four arpents in front and four arpents in depth, bounded southwardly by the southern ditch, and eastwardly by the Mississippi, the said Christy went thereupon, claiming exclusive title.

The defendant then proved that the said Labeaume, some time in the year 1799, on his own account and at his own expenses, made the said ditches; and that the said Brazeau, although he frequently passed through the said land while the said ditches were making and afterwards, made no objection thereto; nor did he ever make any claim to any part of that land included within the said ditches; that the said Labeaume, some time in the year 1799, built a house upon said Brazeau's concession, and put up a rail fence inclosing a great part thereof, not including, however, the said sixteen arpents in dispute, and that Labeaume and his tenants occupied the said house and cultivated the land inclosed in the said rail fence, from the time the same were built and made, until some time in the year 1816, when the said Christy entered on the same, under the said Labeaume, and the said Christy has ever since remained in possession of the same; that ever since the date of the aforesaid deed from Brazeau to Labeaume, they both lived and resided, until the year 1813, in the county of St. Louis, when the said Labeaume removed to Washington county; and the said Brazeau continued until the time of his death, which took place in 18–, to reside in St. Louis county; and that the said Labeaume, when he made the said ditches, erected behind them a fence, which continued standing two or three years, and was then destroyed, and that since the said time the said ditch has been gradually falling in ruins, and that for about twenty years the said ditch has been insufficient as an inclosure, and that during that length of time two roads, generally used, passed through said sixteen arpents in dispute; and no proof was given that, since the year 1801, the said Labeaume or any other person had ever actually occupied the said disputed sixteen arpents, except as

aforesaid, or exercised any acts of ownership over the same. Whereupon the plaintiff, by his counsel, moved the court to instruct the jury:

1st. That if the jury find, that at the time of the making of the deed from Brazeau to Chouteau, the tract of land in dispute was waste and uninclosed by a real and substantial inclosure, and that no person exercised acts of ownership over the same, or took the rents or profits thereof, that the deed from Brazeau to Chouteau is not void under the statute of 32 H. 8, cg., prohibiting the buying of pretended titles.

2d. That if the jury find that the title of Brazeau to the said sixteen arpents of land has been confirmed, and that Labeaume's claim has been rejected by the commissioners, or still remains unconfirmed, that Labeaume and those claiming under him cannot set up the law of prescription against the said Brazeau and those claiming under him.

3d. If the jury find that the board of commissioners have confirmed to Brazeau four arpents in front by four in depth, lying within the ditches, that no adverse claim can be set up against Brazeau's claim, unless it be by virtue of a complete Spanish or French grant, or by a confirmed concession, or by other titles confirmed by the United States.

All of which instructions the court refused to give, to which opinion of the court the plaintiff, by his counsel, excepts, and prays his bill of exceptions to be signed, sealed, and made part of the record, which is done accordingly.

ALEXANDER STUART. [SEAL.]

Bill of Exceptions.

Plaintiff gave in evidence the record of the suit of George F. Strother *v.* William Christy in the St. Louis Circuit Court, as follows:

Record of George F. Strother *v.* William Christy in St. Louis Circuit Court.

In the Circuit Court, county of St. Louis, November Term, 1829.
No. 103.

State of Missouri, County of St. Louis, to wit:

George F. Strother complains of William Christy of a plea of trespass, to wit, that on the 1st day of October, 1829, said Strother was, and is still entitled to possession of a tract of four by four arpents of land, confirmed by the board of commissioners for the adjustment of land titles to Joseph Brazeau, it being a part of a larger tract of four by twenty arpents conceded to said Brazeau, bounded on the south by a tract conceded to Pierre Chouteau, &c. &c. A non-suit was taken by the plaintiff in this case, as is shown by the bill of exceptions signed.

Bill of Exceptions.

GEORGE F. STROTHER
v.
WILLIAM CHRISTY.

Be it remembered, that on the trial of this cause, the plaintiff stated his title to the land, in the declaration mentioned, to be derived as follows: 1st. That said land was confirmed by the board of commissioners for the adjustment of land titles in Missouri to Joseph Brazeau. 2d. That said Brazeau and wife, by their deed dated 24th July, 1816, conveyed said land to Pierre Chouteau.

3d. That said Chouteau, by his deed dated the same year, 1816, conveyed same land to the plaintiff, and said plaintiff alleged that said deed from said Brazeau and wife to said Chouteau was lost; and to authorize secondary evidence as to said deed and its contents, the plaintiff introduced the following witnesses, who testified as follows, viz.:

Pierre Chouteau, who testified that some time, as near as he could recollect, in 1816, Joseph Brazeau and wife executed to him a deed of four by four arpents of land, situated in said county, north of what is called La Grange de Terre; that the deed from Brazeau and wife to him he got recorded in the recorder's office in St. Louis county; that said Chouteau never obtained from said Brazeau any other deed for a similar quantity of land; that he, the said Chouteau, had left said deed with Horatio Cozens, deceased, as his lawyer, since which time he had never seen it; that after the death of said Cozens, he, said Chouteau, had inquired of Joseph F. Garnier, the administrator of said Cozens, who searched for it and could not find it; said Chouteau declared that he believed said deed was lost. Joseph F. Garnier testified that he was one of the administrators of Horatio Cozens; at request of the plaintiff in the case, he had carefully searched among the papers of said Horatio Cozens for a deed *for a deed* from Joseph Brazeau and wife to Pierre Chouteau, and could find no such deed; says, also, that he has had the care and possession of all the papers of said Horatio Cozens, deceased, which he ever knew or heard anything of.

The original book in which deeds are recorded, kept by the recorder of St. Louis county, in which was found the record of a deed from Joseph Brazeau and wife to Pierre Chouteau, dated July 26, 1816, was produced by said recorder of said deed; it appears that said Brazeau and wife, at the date of said conveyance to Pierre Chouteau aforesaid, of all the rights and title to the following tract of land, namely, four by four arpents of land, situate in said county, to be taken from the south part of a concession of four by twenty arpents of land granted to Joseph Brazeau, agreeably to a reservation in a deed from said Brazeau to Louis Labeaume, recorded in the recor-

der's office of St. Louis county, beginning at the foot of the hill on which La Grange de Terre is situated, bounded east by the Mississippi river, west by vacant land.

Mary P. Leduc was sworn, and asked to examine the record of said deed, and state what he knew about the original. Said Leduc testified that he had no distinct recollection of the original deed, but that by the record, that he and his daughter, deceased, were subscribing witnesses to the deed; that he was, at the time the deed was recorded, recorder of St. Louis county, and recorded the deed; that the said deed purports to have been acknowledged before him as the clerk of the St. Louis Circuit Court. Witness says he believes he was a subscribing witness to the deed thus recorded, for the reason that his name appears as a witness, and as the clerk before whom the said deed was acknowledged; and if his signature had been forged as a witness, or the officer who took the acknowledgment, he should have detected the forgery, and refused to record the said deed. He, Leduc, says, that in 1816, when said deed was alleged to have been executed, he was well acquainted with Joseph Brazeau, and with his handwriting; also states that the record of the deed was not in his, Leduc's, handwriting, but was in the handwriting of one Provenchi, who was then employed as clerk in his office; that the record of said deed was signed by him as follows: "M. P. Leduc, clerk."

A deed from Pierre Chouteau to plaintiff was produced, which was acknowledged and recorded, and which shows that said Chouteau has no interest in the land in question. The plaintiff was sworn, and testified that he had made diligent search and inquiry of every person, and at any place with whom or where he thought the original deed from Brazeau to said Chouteau might be found; he had never seen it, or had it in his possession.

Archibald Gamble, recorder of St. Louis county, sworn. Testified that at the request of plaintiff he had carefully searched among the papers of his office, and had been unable to find any deed from Joseph Brazeau and wife to Pierre Chouteau.

On this evidence the plaintiff offered in due time the record of the deed from said Joseph Brazeau and wife to Pierre Chouteau, which evidence was objected to, on the ground that neither the loss nor execution of the original deed was proved. The objection was sustained by the court, and the evidence offered rejected; and the plaintiff, by his counsel, stated that he would take a non-suit, and the court accordingly directed the non-suit to be entered. After which, the plaintiff moved the court to set aside the non-suit for the reasons filed, which motion was by the court overruled.

To this decision of the court the plaintiff excepts, and this bill of exceptions is signed and sealed, and made a part of the record.

WILL. C. CARR. [SEAL.]

2 vol. Mo. Reports, page 148.

Bill of Exceptions.

It was admitted that Chouteau and Strother, in the suits above mentioned, sued for a tract of land within or a part of the four by four arpents situate immediately north of Labeaume's south ditch, next the Mississippi river, and that they claimed the land they sued for respectively under Joseph Brazeau as a part of his reservation mentioned in his said deed to Labeaume.

Plaintiff gave in evidence the acts incorporating the Marine Railway, as follows:

It is agreed that said acts may be read from the printed statute book before the Supreme Court, without being copied into the record.

It was admitted and agreed by the parties that the land in controversy in this suit is worth at least the sum of $250,000. It was admitted that the land sued for in this suit is situated within the limits of the outboundary line of the village of St. Louis, run in conformity with the first section of the act of Congress, approved June 13th, 1812.

Plaintiff then rested.

Defendant's Case.

Defendants gave in evidence the testimony of William Milburn, Jacque Labbé, Antoine Smith, Joseph Labarge, J. Baptiste Hortez, Wm. Waddingham, John K. Walker, Cyrus G. Hoyt, Neal Walker, Derusha Walker, Phineas Bartlett, Joshua J. Childs, Thomas Harris, and Edwin Tanner, from the report of the testimony filed in the case of Magwire *v.* Vice, in St. Louis Court of Common Pleas.

William Milburn's Testimony.

William Milburn, sworn on behalf of defendant, says: I have resided in Missouri since November 5th, 1816. I have known the Labeaume tract in North St. Louis since 1817. I think Major Christy was in possession in 1817 up to 1841. I was engaged in public surveying, and in the surveyor-general's office. Have been surveyor-general of Missouri and Illinois from the spring of 1839 until the summer of 1841.

I was dismissed in April, 1841, but my successor did not take possession until June. I was chief clerk in the office from 1822 to 1839. The first survey of the Labeaume tract was the Spanish one by Soulard. That was before my time. The next was the survey of Mr. Brown, under his contract of 1817, acting as deputy United States surveyor. That survey was returned to the surveyor-general's office in 1822. The surveys of Mr. Brown were examined by myself under the direction of the surveyor-general. In examining

private surveys we look to see if they are made in accordance with the confirmation. The transcript of the confirmation of the Brazeau and Labeaume tracts, as furnished by the recorder of land titles, was defective, as you will see by examining it. In examining these surveys, when I came to the survey of Mr. Brown, in which he had included two confirmations, I went to the office of the recorder of land titles, and there found that instead of four superficial arpents confirmed to Brazeau, as represented in the transcript, and surveyed by Mr. Brown, he had confirmed to him four by four arpents, or sixteen superficial arpents. I then went to the surveyor-general, and informed him that not only had two confirmations been included in one survey, which was not in accordance with the practice of the office, but that too little quantity had been included for one of said confirmations.

Although that survey appears to be approved, it was not. It happened in this way. Mr. Rector was about starting to Washington, and he wished to certify all those surveys of private land claims that were ready, to the recorder. This was in the summer of 1822. General Rector directed me to write certificates to all the surveys that were ready for him to sign before he left for Washington, that they might be delivered to the recorder of land titles, so that patent certificates might issue upon them to the persons entitled. He had directed, however, that this survey for Labeaume and Brazeau, and several others, were to lie over for correction. The surveys were accordingly collected by myself, and given to a clerk in the office, with a form of certificate for him to write to each. How this survey was put amongst them I can't say; it was not so intended. The certificates were written out by the clerk, and the surveys were then placed in a file for General Rector's signature to the certificates. He, supposing them all right, signed them one after another without looking at them in reference to their correctness. It is evident that such a survey could not be approved for three reasons: one is that two confirmations were included in the same survey; another is that four arpents, which purports to be confirmed to Brazeau, is stated to be surveyed for Louis Labeaume, and the surveyor-general always executed the surveys in the name of the person to whom confirmed; the third is, that only four arpents were surveyed for Brazeau, whereas sixteen were confirmed.

(Witness is shown a book, containing a list of confirmations by the old board, page 12, entries of the Labeaume and Brazeau confirmations—356 arpents to Labeaume, and 4 arpents to Brazeau.) This book was made by the recorder of land titles, and sent to the office of the surveyor-general in 1816. The boundaries of the Labeaume and Brazeau surveys are not given in said book. The only description of the Labeaume survey is "356 arpents on the Mississippi," and of the Brazeau, "4 arpents near St. Louis." My recollection is distinct as to the action of General Rector in Brown's survey.

He shortly after left for Washington, and so did I. As a matter of precaution, he left the certified surveys with Bartholomew Cozen, to be entered by him in a book marked on the back, "surveys issued," as delivered to the recorder of land titles, and then to be delivered to him. Mr. Cozen did so; but when he came to this survey, Nos. 982 and 983, he laid it by and did not enter it nor deliver it to the recorder as he did the others: he entered the quantity, situation, and for whom surveyed, but when he came to the column "to whom delivered," "date of delivery," "fees of officer," &c., he left it blank. The entries are, "356 arpents T. 45, N. R. 7 E. Louis Labeaume," and "4 arpents T. 45, N. R. 7 E. Joseph Brazeau." The entry to whom delivered was not made by Mr. Cozen. When General Rector returned in the spring of 1823, he approved of what Mr. Cozen had done. The survey remained in the office as long as Mr. Rector was in office. He went out in 1824, and General Clark succeeded him. No further action was had on that survey while General Rector was in office. It remained just as it was in the surveyor-general's office until October 24, 1832.

Mr. Langham was then surveyor-general. A short time previous to that, he asked me what was the situation of this survey. I told him what I have here stated. I was still chief clerk in the office. He asked if it wouldn't be better to issue it to the recorder for the purpose of getting it patented. I told him it was wrong to do so, that the recorder would not issue his patent certificate, and that it would be improper to send it to him. It seems, however, he thought differently, and it is here entered in the handwriting of A. H. Evans, who was also clerk in the office. The entry by Mr. Evans is "both surveys in one;" in the column of "to whom delivered" is the name of "E. T. Langham," and in the column of "date of delivery" is "October 24th, 1832." In the spring of 1833, I think the claimants of the Labeaume tract, Mr. Conway having refused to issue his patent certificate, as I had told Mr. Langham he would do, applied to have their tract surveyed. An order was issued to Mr. Joseph C. Brown to survey for Labeaume 356 arpents, conforming as nearly as practicable to the Spanish survey executed by Soulard. I mean by that, if the quantity which Soulard's survey purported to be for, had corresponded with the quantity confirmed, he would have been instructed to have run out the lines of Soulard's survey, in accordance with decision of Mr. Wirt, attorney-general of the United States in 1822 or 1823. But as the quantity confirmed was less than the quantity which Soulard's survey purported to contain, he was instructed to throw off the excess on the side which the claimants might direct, and if they gave him no directions, then to throw it off on the side he might deem most for their advantage. This was the general instruction of the surveyor-general in all cases of that sort, adopted after the decision of Attorney-General Wirt. Mr. Brown executed the survey in accordance with that instruction, and re-

turned it to surveyor-general's office. It is certified by him June 8th, 1833. It was approved and certified by General Dunklin, 14th December, 1837. The excess was thrown off on the west—I don't know by whose direction, but suppose that of claimants. "Exhibit No. 28" is a certified copy of that survey. The N. and S. lines were left according to Spanish survey, and the W. line was run so as to include the quantity of 356 arpents. That survey is No. 2974. It was directed to the recorder of land titles. That survey, although complete in itself, and connected with the common field out-boundaries, did not show the interference with the individual surveys in the common fields. In 1838, Mr. Brown connected the survey No. 2974 with the individual lots of the common fields of St. Louis, as represented on this plot, marked No. 23. I approved of the connection, and embodied them in the description of the survey No. 2974, and issued a certificate of survey to the recorder of land titles. It does not appear from the survey itself where the excess was thrown off. I understood a patent certificate issued on the survey, and it would have been patented, only that a connected plat of the township showing this connected survey had not been filed with the commissioner of the General Land Office. I executed survey No. 3333. In this survey I have marked the line where the excess was thrown off in survey No. 2974. I surveyed the N. and S. boundaries, conforming to Labeaume's old ditches. Soulard's Spanish survey purports to run with Labeaume's ditches; and this survey also runs with those ditches. The places of the ditches are hardly visible at present: a person not knowing where they had been, would hardly find them on the ground now. As to the line running with the south ditch, I took the place indicated by Mr. Brown in his survey of 1833, by the bearing and distance to the corner of the ruins of the stone house built by Martin Thomas, and I know that to be exactly or very near where the ditch was, from my own knowledge and observation when the ditch was in good repair. Mr. Powell had a tanyard just above the ditch, and I frequently visited him, and therefore can't be mistaken about the location of the ditch. The old burying-ground was west of the west ditch, and the road turned off west from the mound, running between the west ditch and the bluff. At the south ditch there was an embankment. In the summer and fall of 1817, I lived above North St. Louis. It was always understood that Major Christy was in possession of the Labeaume tract at that time. When I came to St. Louis in 1816, Major Christy was living on the hill near the present North Market. In 1817 I think he moved into the house which goes by his name on this tract. There was a house there before, and he made some additions to it. He remained there until his death in 1837. After his death, his wife and family lived in that house. When I first knew Mr. Christy these two ditches were good—the bank grown over with grass. The ditches at that time marked the boundaries distinctly. A long time ago I once

measured the distance from the mound to the ditch for Mr. Christy; don't recollect what it was. Can't tell whether it was more or less than twenty-five years ago. I gave him a certificate of the distance, and dropped it from my memory. That was the first measurement I ever made there. I knew Pierre Chouteau; he lived on Main street in St. Louis, and had a residence in the country. He lived in this county until he died, a few years back. Think I knew Joseph Brazeau, Jr., though I have no very distinct recollection. Can't tell when he died. Knew about William Chambers having some claim to this property, and also Thomas Wright. They claimed it by purchase from Louis Labeaume. The old road leading down to Rocky branch begins to descend about the north line of Labeaume's tract, according to my recollection. I have known the position of the sycamore corner; I established it, and Mr. Brown found the stone there in 1817. I didn't find the stone in 1851, but took the course and distance to the sycamore tree as reported by Mr. Brown. That corner is marked with letter "M." in pencil on the map. (Witness is shown a paper marked "No. 29," purporting to be translation of grant to Louis Labeaume, and also Soulard's survey.)

The Soulard survey begins where the road crosses the creek, and runs from there to sycamore corner, "M.," thence it runs south, W. to C., thence to D., and thence to the river, and thence around. The descent of the road begins about where the N. line of Soulard's survey crosses the old road on the map, according to my understanding. I didn't discover the N. ditch when I made this survey, but I know that, in former days, it ran past the corner marked M. I found no monument there, except the sycamore, which gave the position of the corner. Most of the Spanish surveys overrun. Mr. Brown started, I think, 50 links east of the S. E. corner-stone of Soulard's survey, and I started at the same place. I ran under the high bank of the river,—the Spanish surveys always *always* ran on top of the high bank. There has been an accretion along the whole tract, except on some part of the lower end. I once made a calculation of the accretion. I ran it southwestwardly along the S. ditch as far as the ditch went, and thence the distance called for in Soulard's surveys. In running the west line, I ran the course called for, until I intersected the line of the N. ditch produced. I measured the S. line from the place of the brown stone, 80 links E. of the top of the high bank of the river. At the S. W. corner I established a corner, and took for the western boundary the course designated in Soulard's survey. We found no monuments at either the N. W. or S. W. corners.

The sycamore at "M." on Hyer's map, we found, blazed by Brown. We found no monuments at the north end.

Witness is shown plat of Peroux's survey, No. 2571. Shown to jury.

This survey is bounded on the N. by Labeaume's ditch, on the E. by the Mississippi river, on the S. by a line running through blocks 14, 27, and 66, of the city of St. Louis, just south of Prune street (now Green street), and on the W. by the E. front line of the St. Louis common fields. The N. line of Chouteau, U. S. survey, No. 671, of his confirmation of 93 arpents and one-fourth by the old board, runs 10 chains 98 links S. of Labeaume's S. ditch. It interferes with survey No. 3332 just 68 links, and is about 120 links N. of the S. line of E. Brooklyn street. Peyroux's certificate was surveyed by Mr. Brown, under his contract, and returned in 1822. It was, I think, in 1818 that Mr. Chouteau entered his protest. It was surveyed before that. Peyroux's survey includes the whole of survey 3332, but nothing north of the ditch, and all of Chouteau's U. S. survey, No. 671. I know the Cerre survey to the north of Labeaume's No. 3209. I have seen the Spanish survey of that tract. The S. E. corner of that survey is the corner "M." on Hyer's map. I never surveyed that tract, but found the S. W. corner of it in surveying the Labeaume tract. The S. W. corner I found to be a large old stone, and identified it. It was a very old-looking stone. I didn't dig around it.

(Petition and concession to Cerre and proceedings before the commissioners read to witness from p. 318 of Report of Commissioners on Land Claims, in Mo.)

The call in the petition and concession to Cerre for a boundary on the E. by Labaume could not be satisfied, if Labeaume's line ran up to the branch, and westward, according to the N. dotted line on Hyer's map.

I found the quantity in survey No. 3333 to be $399\frac{30}{100}$ arpents, including accretions. The quantity of accretion was about 14 acres, or $16\frac{45}{100}$ arpents.

If the N. line of Labeaume's survey ran, as claimed by plaintiff, where the road crosses the branch, there would be about 14 or 15 arpents in the triangle between that and Rocky branch; and the river, if it ran as claimed by defendant, there would be about 40 or 50 arpents. The Cerre confirmation contains some houses, and has been, in part, or perhaps all, laid out into blocks. The same is the case with the space between the extensions of the lines forming the N. and S. boundaries of the four by four arpents, as claimed by Jno. Magwire.

March 23d, 1853.

Examination in chief of General Wm. Milburn, resumed.

I surveyed the Brazeau reservation in December, 1851. Was first on the Big mound in 1816. Was not acquainted with the ground till 1817. I lived above the city.

Witness handed translation of petition, order of survey, and concession, to Joseph Brazeau, and deed from Brazeau to Labeaume,

and translation of deed from Brazeau to Chouteau; also, translation of Labeaume's petition.

Question. Where, from the document just handed you, taken with Soulard's survey of Labeaume's, and the concession to Cerre of his extension, would you, as a surveyor, locate Labeaume's tract?

Answer. From Labeaume's grant alone, I should locate his tract as in U. S. survey 3333; and the survey by Soulard conforms to U. S. survey, and files the terms of the grant; it is the 16 arpents between the ditches represented by the closed lines on Hyer's map. The north closed line files the call of the descent of the road into Rocky branch.

The descent of a road, if it runs over the top of a hill, is from the top of the hill downwards, in the direction called for (or spoken of). If the road runs on the side of a hill, as in this case, its descent is from that point where it inclines downwards to the mentioned terminating point. Then, in speaking at St. Louis of the descent of the road into the branch, the point at which it commenced its inclination downwards,—if we continue on the road, we would say at any immediate point that we were on the descent of the road, not at it. When we arrived at the creek, or branch, we would not then be at the descent of the road into the branch, but we would be at the ascent of the road, out of the branch; that being the case, the north closed line is correctly located; that was Soulard's location. The expression about the word 'angle,' as used in the grant, is ambiguous; in the English translation before me it means nothing as applicable to the case. Some translations make it triangle; I should make it quadrangle in connection with this case. I speak from translations, as I do not understand Spanish. The road begins to descend the hill slightly about where the north closed line is marked, but descends more rapidly from where the brow of the hill is marked, by shaded lines, on Hyer's map. North closed line, as located, is about right, being a little distant from the northwest line of the city. I mark the brow of the hill on Hyer's map by the word "brow," at a line through the letter *o* in the word road. I mean by the brow of the hill, the point where it commences to descend more abruptly, or the edge of the more abrupt descent. I now take the deeds from Brazeau to Labeaume, and from Brazeau to Chouteau. 1st. The deed from Brazeau to Labeaume: according to this deed, I would begin at the foot of the mound, as I understand the words "at the foot of the hill or mound," are the same thing, and not two different points; that is, the two words "hill and mound" are two different expressions for the same thing. According to the description in this deed, I would locate it about where U. S. survey 3332 would place it. If there would be any variation, it would be a little further south, taking the foot of the mound as it now is; but beginning there it would not take you to the Rocky branch by about seven arpents in surveying it; however, we commence at the

beginning point, and run in the course called for till we get at the distance required, to wit, 20 arpents. I now take the deed from Brazeau to Chouteau: according to this deed, I would begin at the foot of the mound, about where U. S. survey 3332 would place it; if any difference, a little south of the survey. I now take the petition, concession, and order of survey to Brazeau, of the 4 by 20 arpents: according to the petition alone, I would not know where to begin definitely—could begin anywhere at the foot of the hill. Beginning point is on the Mississippi river at the foot of the hill. As a surveyor, from this petition, I would begin on the river anywhere in that neighborhood where the claimant might direct, provided I thought his directions conformed to the petition. It is rather an ambiguous call; there is no certainty in it; petition is not definite where beginning point is; from petition alone could not locate the beginning point. The surveyor would put the petitioner in possession of the tract without being particular, so as not to contradict the terms of the petition. I now take the order of survey: to locate that, I would first take the north boundary of the land granted to Esther, and bound it on the south by her land, and run northward, up the Mississippi river, for quantity. I now take the grant: I would ascertain in Esther's northern line, and bound it with that, the same as with the order of survey just mentioned. I now take Exhibit No. 27, a connected plat. I have never examined how to locate the Esther tract, but have looked over the papers, but have never examined on the ground, I mean. The most distinct recollection I have of any persons living north of Labeaume's ditch, is of Wm. Christy and Chester B. Powell. There were others, but I have no recollection of them, except Powell and Major Christy. Can't say how far Powell lived from the ditch—not far; the land Powell occupied was near the ditch, and extended to the river. My impression is, that Powell held under Col. William Chambers. It was some time after I came here that I visited Powell; more than ten years after; he had a tanyard there. Can't say how long Powell lived there; was there more than one year, but can't say how many years.

Cross-examination of General Milburn.

Question. Do not the Spanish surveys sometimes overrun the quantity called for when they are actually measured?

Answer. They do *do* overrun in quantity when actually measured; they are never less I think. I can't say how long Powell was there; part of the property was inclosed; he had a dwelling-house and tan vats; had some kind of fence; what kind can't say; he lived near the ditch; the fence was near the ditch; not far off from it; the house was near the river; he had more than 100 feet on the river; think he had at least 150 feet on the river. I mean inclosures when I speak of posses-

sions. Major Christy's house was north of the ditch; can't say how far north of the ditch his house was, but I think it was about 8 arpents north of ditch, and was about 2 arpents from the river. Christy had extensive inclosures at first. The outside inclosures (the fences) were with the old ditches. The fences were right along the ditches, southwest and north. The ditches were not the inclosures, but marked where Christy's fences were. The fences at first ran along the ditches, but as they fell down they were drawn in towards his house afterwards. There was a fence on the southern ditch to the river from 1817, onwards, my impression is clear. Powell's fence, I think, was on the southern ditch; if it was not there was no other. The orchard, garden, and meadow of Christy were in separate inclosures. Can't say that the meadow had any other inclosures than the fences along the ditches. Christy cut hay on his meadow and pastured it. Outside of the fences, west and south, were scrub oaks.

From the present city waterworks up to the ditch, the land intermediate was overgrown with under-bush in early times. I have seen Labeaume, but had no acquaintance with him. I knew Brown; he was a good surveyor; was a deputy surveyor when I came here; did a good deal of surveying for United States; died some two or three years ago; was about 60 years old when he died. Believes there was a plat of the township, including the double survey, sent on to Washington, but when it was sent can't say, the records of the surveyor's office will give the date. Sometimes reference has been had to the concession, to assist the surveyor in making his survey when the survey was not sufficiently clear or definite. I measured the distance for Christy, from the ditch to the foot of the mound, not 10 years after I came to this place. I think it was when Rector was surveyor-general, and, if so, it was before 1824; it may have been afterwards. I gave Christy a certificate of my measurement; think it was for the purpose of a suit. Most of the old Spanish surveyors call for corner-stones; some, however, called for trees. Where there was any draw of iron, it was noted in the surveyor's minutes. If the western line of survey No. 3332 projected northwardly in same course, it would not leave 4 arpents between it and the river at the north end. If the point called for is "where the road crosses the creek," I should locate it there, to wit, at the point marked Briago on Heyer's map. If the call had been "beginning at the foot of the hill beyond the Big mound," I would look for the foot of the hill beyond the mound, which is about where the ditch is.

Court adjourned till to-morrow at 9 A. M., March 24th, 1833.

Cross-examination of General Milburn, resumed.

The southwest corners of survey 3332, marked stone, is a stone put there by me. There was no stone there when I surveyed it. Same as to southeast and northwest corners. I made the surveys

3332 and 3333 under authority of surveyor-general, and he got orders from commissioner of the Land Office, in accordance with the decision of the secretary of the interior. Near northeast corner, Brown found an old stone, which he called the corner of Labeaume's survey; it is a little west of my corner; about 150 links.

Re-examination by defendant.

Defendant offers certified copy of articles of agreement from Chouteau to Strother, dated 1822.

(Objected to as incompetent and irrelevant. Objection overruled. Excepted to. Same read to the jury.)

This paper handed General Milburn, he says: I am familiar with the ground.

Question. State where Carne's north line runs.

Answer. Can't tell where it is. I should think it was this side of East Mound street, but don't know.

Question. Including all the land between the north line of the land sold by Chouteau to Carr and Labeaume's south ditch, and running back so as to embrace the Big mound, what would the quantity amount to?

(Objected to as incompetent and irrelevant. Objection overruled. Excepted to.)

Answer. From Labeaume's ditch to the north line of East Mound street, and east of the east front line of the common field, thence to the river, contains 28 7/100 arpents.

Mound street contains about one and 99/100 arpents east of common field's line, if 60 feet wide. It ought to be located in quadrangular form. To locate I would have to look elsewhere than to data before me to get Carr's and Labeaume's lines.

Question. From your knowledge of the adjoining tract, can you locate the tract called for?

(Objected to. Objection overruled.)

Answer. I could say from my knowledge where I would put the north boundary, but not where the south boundary.

Question. Can you fix the north boundary from your knowledge of the location as a surveyor from the description in that instrument?

Answer. According to my personal information, and from the papers I have read, I can fix the north boundary.

Question. Do you know the tract called Wm. Christy's?

Objected to.

Ans. I did, in 1822; know the south boundary of what is called Christy's tract.

Question. From personal knowledge of locations on the ground of what was called Christy's tract in 1822, can you locate that tract on the map?

Answer. Yes.

Question. Can you locate it without any reference to any other papers than this contract?

Objected to, and objection not sustained.

Answer. I would locate it along the ditch, to wit, the southern line of Christy and the northern line mentioned in that agreement. The opposite foot of the small hill on the east side is at a small and distinct elevation, somewhere about 140 feet west of Second street, as projected on Hyer's map.

By the court, Question. Do you know what tract was understood, in 1822, to have been sold by Labeaume to Christy?

Answer. Yes; the ditch is the south line in the location. I do not know, from the contract above shown me, what tract was sold by Labeaume to Wm. Christy.

Jacque Labbe's Testimony.

Jacque Labbe, alias Noise, being sworn on behalf of defendants, says: I am 70 years old last August. I live at Cahokico, Ill., and have lived there 21 years—since the 26th of January. I knew Jos. Brazeau from the moment he came to St. Louis till his death. It has been a long time since Brazeau came to St. Louis. I remember when Brazeau came here with Mr. Miceaux and Mad. Charleville, &c., with their barge, and landed in front of St. Louis. I know that Mr. Brazeau occupied a piece of land near the Big mound in north St. Louis a long time ago—some 60 years. Brazeau remained there till the fence was broken down. I never knew him to have any other land than that before the fences were broken down, and it was before the change of government; can't say how long; he was there about ten years before the fences fell down, and it has been about 53 years since the fences did fall down. The land which Mr. Brazeau cultivated was north of the Big mound; Brazeau was on the land; can't say exactly how long, but he was on it till the fences fell down; he had no other land but this. Brazeau's land lay west from the Mississippi river, and running north from the Big mound; it ran about 150 feet distant from the Big mound on Hempstead street. Hempstead street lies north of the Big mound; I have heard it called by that name; it is about 120 or 130 feet north of the Big mound; can't say exactly. I always understood that Brazeau had four by forty arpents; that was the rule in olden time. I knew Louis Labeaume; knew him when I was quite young. When he came to the country, Louis Labeaume had land near the Big mound; there were marks by which his lane was marked. After the fence fell down, he was compelled to put them up. I knew of ditches north of Big mound; the ditches were on Labeaume's land. Labeaume himself lived on the land on which the ditches were; this land was north of Big mound, and north of Mr. Brazeau. The ditches ran from the Mississippi river upwards to the foot of the hill,

and made three faces; he could not make a ditch on the bank of the river, on account of the rocks; and he had a fence there. The ditches were eight feet deep and six or seven feet wide. The embankments were thrown over on Labeaume's side, and pickets were stuck on the inside of the ditches north, west, and south. Brazeau came there before Labeaume; Brazeau was not there after Labeaume laid his ditches; Jos. Brazeau left after his fences fell down, and went to live south of St. Louis upon his plantation, about a mile and a half below the court-house. Mr. Labeaume bought two arpents of land from Brazeau, and then made his ditches; there were two arpents, and Labeaume made his ditch between Brazeau and Labeaume; Brazeau after saw the ditch as often as I did. Brazeau had no house nor fence on the land he sold to Labeaume; it was the common field. Labeaume had a stone house and other buildings on his land after he had his ditches; had an orchard; and last year I saw the house. Mr. Labeaume came here, and two years afterwards got married; had slaves; he built his house about sixty years ago; it was abandoned after he built his house, on account of the Indians. The people had to quit the place. Labeaume left the place (can't say when), but he sold to Christy and another person; the two were in partnership, and bought it. I was often on the land when Labeaume lived there; knew him and children. Mr. Christy lived there after Labeaume left, and Christy told him that he owned the place. Can't say how long Mr. Christy lived there within the line of the pickets. I knew a limekiln near the Big mound; it belonged to Brazeau; was to the south of the ditch about 100 feet. The limekiln was there before he sold to Labeaume. Brazeau died about 32 or 33 years ago. I knew Pierre Chouteau since I have had the age of knowledge till his death. Brazeau and Chouteau lived on Main street in St. Louis district. Chouteau, about 30 years ago, went and opened a plantation in the prairie west of St. Louis; and Mr. Brazeau, after his fences fell down, went and settled on his plantation south of St. Louis, and died there.

Cross-examination.

I don't know how old Mr. Brazeau was when he died; was very old when he came to St. Louis; he was married; had no white children; never had any children by his wife. I might have been about 5 years old when Brazeau came first to St. Louis. During the time I lived in St. Louis, I worked at many things; was on the rivers Mississippi, Missouri, Ohio, &c.; worked for other men on the voyages, not myself. I had a piece of land in Pont du Lac, which I cultivated. The fence which I said fell down was the common field fence; it was the only fence which the people had here; the fields which were cultivated were west of the fence; this fence fell down about 52 or 53 years ago. Labeaume was here before the fence fell down. Labeaume's ditches were made after the government was

changed. Six months after the government was changed, there was a fort built at Florissant. The depth of common fields was forty arpents. Brazeau built his limekiln where he did because there were rocks there. There were but two limekilns near the Big mound. Persons went anywhere to get rock for making lime, provided it was along the river bank.

Court adjourned.

Cross-examination of Jacque Labbe resumed, March 25, 1853.

It was a good place for making lime where Brazeau got rock for making lime. Brazeau, before he sold to Labeaume, cultivated wheat, corn, peas, &c.; he cut hay on the hill. The people cut hay at that time everywhere in the prairie, and if it was on any other person's land, they made no complaint. Brazeau, like others, cut hay where he found it convenient, none making opposition. Brazeau cut hay on the west end of his forty arpent tract; any one could cut hay there. After Labeaume came here, and before Brazeau sold to him, there were no fences but common field fences. The common field lots north of the Big mound ran from the river forty arpents westwardly. Before Brazeau sold to Labeaume, land was of little value, probably fifty cents per arpent. In early times everything was equal—hay, rock, timber, &c. Mr. Labeaume told me that he had bought two arpents from Mr. Brazeau. After Brazeau's fences, on his plantation near the Big mound, fell down, he moved to his plantation below St. Louis. Sometimes they called the mound the hill of the mound; sometimes the hill behind Mr Labeaume's; and sometimes the hill at the Rocky branch. Brazeau did not use drift wood to burn his lime; he used good solid wood; he built his limekiln there because conveniency of the rock to it. Brazeau did not make lime there after he moved below the city; he hired his kiln to Mr. Prineau and Bissouet, and they made lime for several years. The kiln was built against the bank, and was of rock, and was built of rock; large enough to hold 500 to 1000 bushels. Bissouet and Prineau hired the kiln of Brazeau, because Brazeau owned it. Prineau and Bissouet burnt lime after Brazeau's fence had fallen down; can't say how long, whether two or three years. The kiln has gone to decay. I knew none to burn lime in the kilns after Prineau and Bissouet used it.

Re-examination by defendant.

Labeaume entered upon the land before Brazeau's fence fell down; Labeaume made his ditches before the fences fell down, I think. The fences fell down fifty-two or fifty-three years ago; fell down before the change of government. It has been fifty years since the change of government. The common field lot's fence was not north of, but struck the gable end of the Half moon. The common field fence was the only fence; when I speak of fence, I mean common field fence.

After Brazeau built his limekiln, he claimed a square of ground about it. I remember distinctly when the change of government took place.

Antoine Smith's Testimony.

Antoine Smith, being duly sworn on behalf of defendant, says: I was eighty-one years old the 6th January last. Have lived in St. Louis, and now live in Florissant. I knew Joseph Brazeau and Louis Labeaume. Brazeau had a piece of land on the north of the Big mound. Brazeau's land started at the river, and ran west to the slope of the hill. The cultivation of Brazeau ran north of Hempstead street; ten feet north of it. I have always heard it called Hempstead street, never otherwise. The ditch was dug about fifty-four or fifty-five years ago, I think. Mr. Brazeau cultivated on the south side of the ditch; about one hundred yards south of the ditch. It was about the same distance from the kiln to Brazeau's south line, as from the kiln to the ditch of Labeaume.

The ditch stands about one or one and a half arpents south of Rocky branch, coming up this way, and it starts from the foot of the hill, and runs east to the river; also the ditch on the north of this land.

Labeaume had buildings on his land. Don't know how long Mr. Labeaume lived there. He was living there when I went to Florissant, and to the best of my recollection was there eight or nine years. After Labeaume, I was told that Christy and Chambers went on the land.

Cross-examination.

I went to Florissant four years after the change of government. I did all kinds of work, chopped wood, cut hay, and worked in Mr. Chouteau's mill. About five or six years before the change of government, the common field fence fell down. Forty-nine years, the 10th March, government changed. Can't say how much Brazeau had in his piece; was told he had four arpents wide, can't say how deep. Starting from the road, he cultivated up to the timber on the hill. In regard to shape, the land was west from the river. I saw Brazeau working on his land there sixty-two years ago. I came here sixty-three years ago; was born at Montreal, Canada. The land which I have described is the land which I saw Brazeau cultivate. He cultivated wheat, corn, and other things raised by farmers. The hill of the Big mound was not cultivated, it was too high. The cultivation terminated in *in* the slope of the hill, not exactly at the foot of the hill. I heard it said that Brazeau sold a piece to Labeaume; was sold after the fence was down. When the ditch was making, I understood of the sale, and Miller was making the ditch. The people went anywhere on the prairies to cut hay, where land was not cultivated; hay and timber were free to all. The people went any-

where to get rock to make lime, where they could find it. There were plenty rock where Brazeau's limekiln was built. It was a good place for making lime. I saw Major Christy on the land, myself, after Labeaume left; was some thirty years ago. I have been there lately; not very often; twice in the last two years. I went there to look at the place at Mr. Sturgeon's request; Labbe and Peter Pion and Jo Hortiz were with me. After selling to Labeaume, Brazeau lived in the city, near Green street, south of Mr. Clamorgan, and afterwards went to his plantation, south of the city of St. Louis. Land was not worth much when Brazeau sold to Labeaume. Labeaume cultivated east and west of Broadway; he cultivated on three fronts, north, west, and south; by fronts I mean the front of land, the side, and the behind part. He raised corn, wheat, &c., and afterwards turned it into a meadow. I have not passed there for perhaps twenty years, till within the last two years. Many changes have taken place there. I knew Bob Moor; knew him from the time he came to the country. He died four or five years ago. When Moor first came here he hauled rock, and afterwards went and opened a plantation for himself, thirty-five or thirty-six years ago. Prineau and Bissouet made lime then at the kiln (in Brazeau's). I have not seen the kiln since about thirty-five years ago; it has gone to decay now. Bob Moor had a limekiln south of that. Moor had his a number of years ago. Don't know who built Moor's; I suppose he built it himself. Labeaume had an orchard, garden, and fences; fences were east of Broadway, and north of Big mound, about four or five arpents. I never knew the Big mound called other than Grange de Terre. Labeaume's wheat field was on both sides of Broadway. At that time there was no road where Broadway now is. On the front part of his house he planted nothing; had corn west of his house. The ditch was three or three and a half feet deep, and six feet wide embankments; three feet high, or thereabouts. The whole hill down to Labeaume's ditch was not called the Big mound. I never said that the foot of Grange de Terre went to Labeaume's ditch, in a former deposition. In early times we sought the prairie for cultivation; if level, good; if sink-holes, no difference; all land was free, and if no others had it, anybody could get it for asking government for what was wanted. I, in a former deposition I said, I supposed that the Brazeau tract was four arpents front on the river, and ran forty arpents west. I can neither read nor write.

Joseph Labarge's Testimony.

Joseph Labarge, sworn on behalf of defendant, says: I am sixty-eight years old the 4th of July next; was born in Canada, and came here forty-seven years ago. Knew Louis Labeaume; worked for him two years and more; two months after I got here I worked for him. I knew Labeaume's ditches at the Big mound. I found

the ditches already built, and all I had to do was to keep the fence on the embankment three rails high; was assisted by negroes which I brought with me. There were fences along the ditches when I went to Labeaume's, in some places three, and other two rails high, and had to be fixed. Labeaume's old house was already there, and I planted the orchard the year I went there. I know where the ditch is. The ditches were two and a half to three feet deep, and the embankment about two feet high. I stayed on the land of Labeaume more than two years. I knew Labeaume then twelve or thirteen years. After Labeaume left Christy came in there. Christy went on the same land previously occupied by Labeaume. Christy had his house built near Labeaume's house; don't know how long Christy was there, but was told he died there. About one hundred yards south of Labeaume's land and ditch, there was a limekiln on the river. I knew Paul Prineau and Brissouet, but don't know that they had anything to do with the kiln. I was told that the limekiln belonged to Brazeau, for it was on his land.

Cross-examined.

Mr. Labeaume said it was Brazeau's limekiln, and others also said the same. Labeaume told me that Brazeau had that limekiln and land long ago, forty or forty-one years ago. When I stayed there I never saw anybody use the limekiln. About two years ago I passed along and saw the stones there, and the ditch; was examining the ground. Went with Sturgeon, at his request, and but one time. Never went to examine the premises but that time with Mr. Sturgeon. For thirty years I saw no other limekiln in that environ, but saw others farther down. The nearest one, I think, was about half a mile from Brazeau's.

J. Baptiste Hortiz's Testimony.

Baptiste Hortiz, being sworn on behalf of defendants, says, I am 61 years old this month; was born at St. Genevieve; was one year old when I came to St. Louis. I knew Labeaume; was on Labeaume's land on the Big mound in 1808, 7th of March; remember the day distinctly, because on that day my father died there; I never was in the house before that; I saw the plantation when I was a boy; I recollect perfectly that there was a ditch around that land; I can't say how long Labeaume lived there, but Christy was the first person who lived on the premises after Labeaume left; Christy stayed there till he died; don't know when he died; the ditches were in good order at that time, except where they filled up a little; Christy lived within the three ditches; lived in the old house, and then built a new stone house.

William Waddingham's Testimony.

Mr. Waddingham, being sworn on behalf of defendants, says, I came to St. Louis in 1819; have lived here ever since; know Christy's land; when I came here it was north of the Big mound; there were ditches there; the ditches were plain when I came here; I could see them; the land within the ditches was occupied by Christy; Christy stayed there till he died; has been dead eleven or twelve years or more.

I knew a tan-yard in S. part of that tract, established by Lapsley in 1823; was on the N. side of the ditch; at first he thought he was on land of Dr. Farras, but learned afterwards that he was on William Chambers's land; he had a verbal lease, I think; I never saw a written lease; Lapsley was there till 1828 or '9; was succeeded by Martin Thomas, Wilson and Powell; the possessions extended up the river to about Webster street north; west to where Main street is or a little across it; no fence was on the north end of the land, but there was on the west end by Christy's meadows; Lapsley sold out to Thomas & Wilson; don't know what rent Lapsley paid Col. Chambers; he paid some rent. I have known William Chambers since 1821; I understand that Chambers and Christy bought this land of Labeaume; I never heard them say; I know Lapsley's handwriting.

Witness handed exhibits D. and E. in the deposition, and identifies Lapsley's handwriting, also indorsement of Wm. Chambers.

After Christy's death, I believe that his widow lived in his, Christy's, house till she died.

Within a few years the outlines of the ditches were visible, until the people began to build there. The land within the ditches has, in my recollection, always been called Chambers's, Christy's, and Wright's land. I have only seen the above parties (Chambers, Christy, and Wright) in possession of that, except the lots sold by them to others. Lapsley sold to Thomas & Wilson his house, vats, and fixtures, in the fall of 1828 or spring of 1829. They occupied the land thus but some two or three years; I don't know whether Thomas & Wilson knew that Lapsley was a tenant of Col. Chambers when they bought of Lapsley. Wilson was on the land before he bought of Lapsley; was some three or four months in making the trade; I never saw Col. Chambers on the land at the time Wilson was there; Walters was the first one I saw in there after Thomas & Wilson went out; don't know how long, but he stayed there some years; don't know who came in next after Walters; there were some persons in the house when Emerson was building boats.

I saw Col. Chambers on the land when Lapsley was there, but not when Martin Thomas was there; saw Col. Chambers about there till he died, but not on any particular land.

Cross-examined.

I saw Mr. Magwire up there some time ago; may have seen him there as far back as 1836, but can't say; I have heard Magwire say he claimed the land; saw him on the ground when Emerson was building boats; Emerson did not say to me that he held under Magwire; I did hear that Thomas claimed the land; believe there was a suit, and a compromise two years after suit brought; Chambers sued him; Lapsley went on the ground as Farras's land, and afterwards wrote to Chambers when he learned the land was his. In 1819, there was no fence around the land where the boat-yard was.

Christy's meadow was inclosed, and all the rest lay open, except a little inclosure of a Frenchman near the south ditch; Lapsley's land was inclosed; his inclosures were twenty or thirty feet west of Main street and down to the ditch; Bob Moor had a kiln on the river-bank, about opposite the centre of the Big mound, this was a good while ago, when I came to this place; Paine drove Moor off in 1831 or 1832; I never saw any ruins from Bob Moor's kiln up to Labeaume's ditch; I don't know what Chouteau's north line, as surveyed by United States, was up there; don't know where William Carr's north line is; there was a little house east of Broadway about one hundred yards, occupied by a Frenchman; a man, horse, or cow could walk over the ditch when I came to St. Louis, but the ditch was very visible.

John K. Walker's Testimony.

Mr. John K. Walker, being sworn on behalf of defendant, says: I knew Col. Chambers during his life; knew that he claimed an undivided interest in the Labeaume tract in North St. Louis; claimed it with Maj. Christy and Maj. Wright; I have known the property since 1818; I knew Christy and Chambers in 1818; was agent for Chambers in 1821, '22, and '23, and probably in 1824; I think I paid Chambers's taxes on his interest in the Labeaume tract; Maj. Christy was living on the Labeaume tract at that time, a short distance from where the present residence is; I used to see the old ditches, one at the south, one at the north, and one at the west end; I did not reside near the property; lived in town from 1818 to 1826; in 1826 I moved out of town, then moved back to town in 1834.

The Bellefountain road was west of the ditches; Christy used some of the premises for meadows, till within twenty years; the west fence ran from south ditch to north ditch, ever since 1818; can't say who claimed the tract; Martin Thomas claimed some of the south part, and Strother too; there was a suit for some land north of the north ditch; I executed a writ of possession in favor of Maj. Christy against Martin Thomas; Christy put in possession; I never heard of his being disturbed in his possession; at the southeast corner of the tract

I don't know who was in possession; I executed a magistrate's writ against Lapsley; Powell had something to do with it, also Martin Thomas; when I went to execute the writ, Col. Chambers gave me a paper, and directed me if they signed it to let the parties remain in possession; I think it was (the paper) an acknowledgment of Col. Chambers's right of possession; Lapsley signed this paper; Powell was interested somehow in that matter; can't say what year this was; after that period Col. Chambers exercised acts of ownership till his death.

Cross-examined.

Mr. Chambers frequently talked with me about his land there, and about his lots, and about a saw-mill which was on the site of the tan-yard lot or near it; saw-mill was built somewhere about 1845; I think Chambers sold some lots, for I saw houses going up; I have no personal knowledge, except the execution of the writ of possession, of Chambers claiming the land within the four by four; Lapsley signed the paper; I left him in the possession; I gave the paper to Chambers, I think; when I executed the writ it was about 1830; I was a deputy-sheriff in 1818, under Joseph C. Brown; Brown acted till 1822, and I in his employ in 1822 and 1824; I was elected sheriff; was sheriff till 1824; in 1828 and '29, I was collector of State and county revenue; for two or three years before 1820, there was considerable rage in real estate; the Land Office was not then opened; in 1821 there was a crash, caused by a failure of State banks, and continued till 1833 and 1834; when sheriff, I sold considerable land; there were few bidders for land at the sales except parties interested. For instance—the Bissell and Dr. Bryan's farms were sold, in 1824, for $7 an acre. The quarter of block west of the jail was offered me for $500 by Mr. Van Pheel. I don't recollect that Chambers had his interest in the Labeaume tract sold by the sheriff; the Stokes property, at corner of Vine and Main streets, was sold at $2000; the whole Missouri square for $5100; the whole square W., less one little lot, was sold for about $500; this was about 1824; land was a drug in market about that time; from southwest corner down to river, I never took much notice of fence; Christy, Chambers, and Martin Thomas & Co., were lawing a great while about it; the writ of possession was not as late in date as 1832; I don't know that the writ was against any but Lapsley; I only got Lapsley to sign the paper.

By the court.

In the period of time spoken of, the property below the hill on Main (street), in St. Louis, was comparatively much higher than it was west of the hill in town. In 1822 or '23 I sold a large lot, where Clark's banking-house now stands, 100 feet front, brought only $200

or $300. A lot at south of Locust and east of Main, running to the river, sold for $8000, and there was a large brick house on it.

Cyrus G. Hoit's Testimony.

Cyrus G. Hoit sworn, on behalf of defendants, says:

I came to St. Louis in the fall of 1843; was in the employment of Col. William Chambers shortly after I came here as his collector of rents, and doing general business. Don't know any mark of a ditch, don't know where the ditch is; I know where Webster street is. There was a street which ran to the river immediately north of an old mill, but I don't know its name. From this street to Webster street, and from the river west to Second street Col. Chambers owned the land; there were tenants on some portions of this property. I was agent for Col. Chambers two years, till March, 1846. Lewis, Probst, and Walters, also Dabbs and Allen, Hall and Childs were tenants of Col. Chambers; I made Hall, Allen and Childs a written lease for mill lot, No. 3, in block 288; and leased as tenants at will lots west side of Main street, in block 292, lots 45, 46, 47, and 48, for the purpose of laying logs on them. All the leases were in writing. (Witness shown a lease, dated June 1, 1845, Chambers to Hall and Childs, lots 46, 47, B. 27, and all the unleased part of B. 29, and identified it as lease made by him for Chambers. These numbers were according to a map of N. St. Louis before the present city numbers.) Hall, Allen, and Childs occupied mill lot during my agency—Chambers' property; some lots were in blocks 292 and 293, fronting on Main steeet. The mill lot was in block 288, fronting on Main and Webster streets. Some of the above lots run as far west as Second street. Chambers paid taxes on this property. Walter's and Probst's houses were old log houses, Walter's was oldest; can't say how old they were, they required propping up. The heirs of Christy and Wright held property in and about there; I know some of the Wright and Christy's heirs. Dr. Smith occupied a stone building, I think, fronting on Second and Main streets. I never saw any of the heirs doing anything in reference to the property in block 292. I have known the property to this time.

Cross-examined.

I was then at no bickerings out by one party or the other. Dabbs' house was on the west side of Main street, was built during my agency by Col. Chambers; his house, I think, was on lot 47, was a frame house. The ruins of an old mill was south of the lot leased to Hall and Childs, was brick or stone; foundation was stone; was south of the ditch as marked on map. After Hall and Childs leased lot 3 they built their saw-mill; before that the lot was vacant; this lease, I think, was for five years, with an extension of five years. The saw-mill was burnt down, I heard, after the fight. Can't say

what lots in block 292, but think that the ones nearest to Webster street run west to Second street. Col. Chambers was absent most of the time when I was his agent: he lived most of his time in St. Louis. Knew of no saw-mill on that block before Hall and Childs'.

By court.

Lewis lived in lot 2, block 288, Probst in lot 1, same block as Walters, near the west end of block 1. Walters's house was east of Main street; Lewis had fence, Walters had not. All Lewis's lot was inclosed.

Neal Walker's Testimony.

Mr. Walker, sworn on behalf of defendants, says:

Have been in St. Louis thirty-seven years. I leased ground in North St. Louis. Knew a place called Labeaume's ditch; it was well marked when I saw it. I leased from Major Christy, bounded south by this ditch (leased some three or four arpents), it was a written lease, have not seen it for ten years (bounded east by Main street, north by about Webster street, or went a little over Webster street, and west by Broadway); had a fence around it; built a house on it in 1828, and fence same year; was tenant of William Christy, north of the ditch the property was called the Christy, Chambers, and Wright property. I lived on it two years; Riney came into it after I left; can't say how long he was there, he went into my house; I got $50 for improvements I made. North of ditch and east of Main street Lapsley lived. Major Christy owned the tract when I came here; Christy had a house within the ditches (Labeaume's). I came there in 1827, and worked his farm in 1828; I left in 1830. Can't say positively who exercised ownership since, but I understood Christy, *Christy*, Chambers, and Wright did. I had a garden; the ditch was very visible. The ditch was so high that I had in one place to make very little fence.

Cross-examined.

In 1828 I worked Christy's farm on the shares, back of his stone house, northwest, raised corn, potatoes, &c. The fields were inclosed; he had no plough land south of his house, but had some few lots inclosed (yard-pens), had nigger houses in there. In 1827 I first knew this tract, particularly along south line; in some places it needed fence only two rails high. The ditch from Broadway to the river was not a sufficient inclosure without some fence. I sold to Powell for $50, and Riney went in under Powell, I understood. The lot I bought of Christy; I took a bond for a deed. The lot ran back to near Broadway. There was a fractional lot between me and the ditch; don't know how far it was from the ditch. I built on high ground, halfway between Main street and Broadway; think it

was not 300 feet from Broadway; think it was 150 feet from Broadway; between Major Christy's and the ditch, excepting my house, there were no improvements, excepting limekilns on the river.

Derusia Walker's Testimony.

Mrs. Walker sworn, on behalf of defendants, says:

I was born in 1802; came to St. Louis first in 1821; I knew the late Wm. Christy. Saw Col. Chambers frequently, but was not acquainted with him; I knew where Mr. Christy's house was in North (St. Louis); I lived near Christy's house; once lived in same yard, in 1828, but before that lived quarter of a mile below, near the river. Went to this place below in 1827 to reside; my husband's name is Neal Walker. In 1827 we lived in a house that Lapsley occupied; in 1828 my husband rented of Mr. Christy three or four arpents; he put a fence around the ground he leased; it was situate in the south part of Christy's tract, adjoining the ditch; the ditch was south of it; Lapsley's house was east of us, on the river; there was a road, which, I now think, is Main street.

My husband ran a fence up to Webster street, along Main street, and west to where Broadway now is, or very near there; he used the ground for garden, don't know what rent he paid Christy; my husband bought a lot, and *leased* around it in 1828, and sold his lease in 1830; sold to Martin Thomas, but Powell, I think, paid the money; don't know which claimed it, Thomas or Powell.

Lapsley had a tan-yard; his tract extended to the ditch, south and north, two squares; Lapsley held under Chambers and Christy; Lapsley and Christy both said so; Lapsley sold out to Wilson in 1839, I think; I don't know whether Wilson was concerned with Thomas and Powell; I think that Thomas and Powell were concerned together; Lapsley's premises extended to the river: since 1830 we lived awhile in central St. Louis, and after a few years moved to the country; know Christy's family well; can't say where Mrs. Christy died; she lived in Christy's house up there till her death; Mr. Chambers and Christy claimed to own the land after 1830.

Cross-examined.

Did not know that Thomas held anything except by lease. I never heard Thomas say how he held. My husband's lot ran west till very near to where Broadway is. The lot which my husband *bought* was got of Christy. After my husband sold out I have not been there much; was there a few times the year after. Lapsley's premises went up as high as Webster street. I have not been there for 10 years. Have been along Broadway, and know where Webster street runs into it. Lapsley fenced in the southeast part, about 1 acre, after we came on the land. Heard Lapsley say he had more

than he had fenced in. Lapsley was there more than one year, I think. My husband had a written lease, I think.

Phineas Bartlet's Testimony.

Phineas Bartlet, sworn on behalf of defendants, says: I came to St. Louis May 9th, 1812. Saw Labeaume's ditches soon after I landed. Labeaume and family resided there when I came. Some four years after, he sold to Christy and Wright. Can't say that any one remained on the land when Labeaume went to Jefferson county. Christy went on the land to live. Don't know how long he lived on the land, but think that he lived on it till he died. I knew Lapsley; he had a tan-yard there. Knew a company called the Marine Railway Company; had their railway south of the ditch, where the pine-mill now is. Saw the Marine Railway Company there about 25 years ago or upwards. Have frequently been on the land within the ditches. Knew Labeaume to own the land, and Christy, Chambers, and Wright.

Cross-examined.

When I came here the country was overgrown with small trees. Towards the river the trees were larger than they were westwardly. Christy and Labeaume had cultivated fields in north part under fence. South of these inclosures was this growth of trees. Don't know in what year Marine Railway Company commenced operations. I remember the time, though. Don't think they stayed there longer than one year. The screws were turned by horse-power. Don't remember of their having any house. The rails might have been extended in an angular direction, west 150 feet, more or less, from the bank of the river. It has been 25 years since the railroad company broke up. I think there was a small building, used by the company, between the rails and the river, and north of the pine-mill. The south ditch was plain when I came here. I have crossed south ditch; also north, and east, and west ditches—all. There were embankments along them. The ditches were not sufficient to keep cattle out. One of the ditches extended some 2 or 3 miles out into the prairie. There was no fence then on it. I knew George F. Strother; he came here after me. Don't know when he died. (Admitted that Strother died in 1840.) I am 67 years old next August.

J. J. Childs' Testimony.

Joshua J. Childs, of lawful age, being produced and sworn, on the part of the petitioners, on his oath deposeth and saith as follows, to wit:

Question. Where do you reside?

Answer. In the city of St. Louis.

By the agreement of the petitioners and the counsel for Magwire, the taking of these depositions is adjourned until Monday afternoon next, the 1st of September, 1851, at the hour of 3 o'clock.

M. S. CERRE,
Clerk.

Monday, September 1, 1851.

I resumed the taking of these depositions pursuant to adjournment, at the time and place named. And the examination of Joshua J. Childs being resumed, he saith as follows:

Question. Did you rent of William Chambers any lands in North St. Louis in 1845?

Answer. We, Hall, Allen & Childs, rented lot No. 3 in block No. 1, on the map of North St. Louis; but that is not all we rented of him.

By agreement, the taking of these depositions is adjourned until to-morrow afternoon, at 3 o'clock.

M. S. CERRE,
Clerk.

Tuesday, P.M., September 2d, 1851.

Pursuant to adjournment, I resumed the taking of these depositions at the hour and place named.

M. S. CERRE,
Clerk.

The examination of Joshua J. Childs being resumed, he saith on the part of the said petitioners as follows, to wit:

Question. Was there a written lease for lot No. 3?

Answer. There was.

Question. How long a time did it have to run?

Answer. I have not seen the lease for a long time. I think it had five years to run, renewable for five years more.

Question. State the names of the lessees.

Answer. Elisha Hall, Judson Allen, and myself.

Question. Did Hall, Allen & Childs take possession of that lot? If so, how did they occupy it?

Answer. They did take possession of it, and occupied it by a saw-mill.

Question. State what other lots Hall, Allen & Childs leased of William Chambers.

Answer. I can state this only by examination of exhibit C, hereto annexed. This exhibit is the lease we executed; and it mentions lots No. 4 and 6 in block 2, lots No. 8 in block 3, lots No. 52, 53, and 54, in block No. 26, lots No. 46 and 51 in block No. 27, and all the unleased part of block 29; all of which were leased to us by that lease.

Question. Did you take possession of those lots? If so, when?

Answer. We never had possession of all of those lots.

Question. State which lots you had possession of, and why you did not take possession of the others.

Answer. I don't know by the numbers of those lots which they were. We had possession of the lots below Webster street. By looking to the map of North St. Louis, I see that we had possession of lots No. 46 and 51, in block No. 27. I believe that those are the only lots we had possession of under that lease. We did not take possession of the others, because when we went there all of the land above the ditch was covered with logs belonging to Judson & Brotherton or Marshall Brotherton. My brother's log-yard ran up to the ditch, so that there was no room there for a man to do anything at all; and it was only by an understanding with Col. Chambers that I should have his property to lay my logs on, that I leased the property to put a mill on it. When we had the mill built, and had no place on which to put the logs, I went to Col. Chambers and had the lease executed, which is hereto annexed as exhibit C. I then requested Brotherton to surrender to us the lots which we had leased. He agreed to, and did surrender to us the lots below Webster street, and retained the others. Brotherton had occupied some lots below Webster street, belonging to Christy and others, which he said he had the privilege of using. These he proposed to exchange with us for the lots that we had leased above Webster street; which was accordingly done.

Question. State what lots Hall, Allen & Childs finally occupied.

Answer. We occupied by a saw-mill lot No. 3 in block 1; and all the vacant lands bounded south by Labeaume's ditch, east by Main street, north by Webster street, and west by Broadway, with logs and lumber. By Labeaume's ditch I mean the water-course that runs through there towards the river.

Question. How long did Hall, Allen & Childs continue to occupy these lots?

Answer. We occupied them until Emerson and I bought out Hall & Allen; which must have been in the spring of 1846, I think. I refer to Primus Emerson.

By consent, the further taking of these depositions is adjourned until to-morrow afternoon, at 3 o'clock.

M. S. CERRE,
Clerk.

Wednesday, September 3, 1851.

Pursuant to adjournment, I resumed the taking of these depositions at the hour and place named.

The examination of said Joshua J. Childs, on the part of the petitioners, resumed. Deponent saith:

Question. Did you ever lease the remaining lots south of lot No. 3

in block No. 1, together with fractional lot A in the said block? If so, from whom and when.

Answer. I never had any lease of those lots.

Question. Did you ever rent them from any one? if so, from whom, and when?

Answer. When I built the mill I got from Mr. Hoyt, the agent of Colonel Chambers, the privilege of putting my cistern on the lot next south of the mill.

Question. At the time you first built your mill there who occupied the land south of it?

Answer. There were several small tenements there; I don't know the occupants of all of them; I understood that John Lewis had several of them.

Question. Did John Lewis own the land or did he lease it? If he leased it, state from whom.

Answer. I think that he leased a lot, or part of a lot, from Col. Chambers; I think that this was lot No. 1, in block No. 1.

Question. Did you purchase Lewis's interest in the said lot or lots which he occupied; if so, when?

Answer. I bought Lewis off the lot there, and put a boat-yard upon it, in the fall of 1846, I think.

Question. What do you mean by the expression, you "bought him off?"

Answer. I mean that I paid him for the tenements on the lot.

Question. From whom had Lewis leased the property which he occupied then?

Answer. I think that he leased the land from Colonel Chambers.

Question. Do you not know that he leased it from Colonel Chambers, or his agent?

Answer. I did not see him lease it.

Question. Have you ever seen the lease?

Answer. I have seen it.

Question. What was the lease?

Answer. It purported to be executed by Colonel Chambers and John Lewis.

(Objected to by Magwire.)

Question. Before you purchased out Lewis did you have any conversation with I. H. Sturgeon, as agent of Chambers, in relation to purchasing Lewis' interest in those lots, as in the lease, or in relation to the occupation of any of those lots south of the sawmill; if so, what was it?

Answer: I asked Sturgeon whether he would object to my buying out those persons who occupied the lots, and if I did, whether he would lease them to me, for the purpose of establishing a boat-yard there. I mean if I bought off the incumbrances, whether he would lease to me the whole ground south of my mill. He told me that he had no objection to my buying off the tenants, but that he desired

time to write to Colonel Chambers, or his uncle, Robert Tyler, I forget which, before he would give me an answer as to the terms. I represented to Mr. Sturgeon that those houses were nuisances there, and that they might, at any time, take fire and burn the mill down, and that I wished to put a boat-yard there.

Question. Who was concerned with you in this boat-yard?

Answer. Mr. Emerson.

Question. Did Mr. Magwire have, at any time, any interest in it?

Answer. He did not, at least as long as I had any thing to do with it.

Question. Had he been previously concerned with Mr. Emerson in a boat-yard?

Answer. Not that I know of my own knowledge.

Question. Do you know from admissions of Mr. Magwire?

Answer. As far as I know from his admissions, Mr. Magwire never was concerned with Mr. Emerson, but Mr. Magwire had a boat-yard, and employed Mr. Emerson in it.

Question. Was Magwire's boat-yard broken up when Emerson came down to yours?

Answer. It was.

Question. At the time you purchased out Lewis did you take any written assignment of his interest from him?

Answer. I did.

Question. Where is it?

Answer. I do not know.

Question. To whom was that assignment made, to yourself alone, or to you and Emerson?

Answer. I cannot recollect.

Question. When did you last see that instrument, and in whose hand was it?

Answer. I think that it was among the books and papers of Childs and Emerson, until I left there.

Question. Did you, at any time, have any conversation with Magwire in relation to obtaining a lease from Colonel Chambers, or his agent, of those lots on which the boat-yard was afterwards placed? If so, what was it?

Answer. I, at that time, conversed with Mr. Magwire almost every day in relation to our business. I don't remember any particular conversation in relation to that matter. He thought that it was best for us to have the boat-yard there.

Question. Did he, at any time, suggest to you or recommend to you to obtain from Colonel Chambers, or his agent, a lease of those lots?

Answer. I do not remember that he did.

Question. You say that you had frequent conversations with Mr. Magwire in relation to your business, what business do you refer to?

Answer. The building of boats and carrying on a saw-mill; the business of Childs and Emerson.

Question. Did Mr. Magwire know of, or had he any part in procuring this assignment of Lewis's interest in these lots before spoken of?

Answer. I think that he knew of it.

Question. Did you ever have in your possession the lease of Chambers to Lewis?

Answer. I did, or had a paper which purported to be such a lease.

Question. Did you have it in your possession before and at the time of Lewis's assignment to you?

Answer. I had seen it before then, and think that I had had it in my possession; and that I had had it in my possession at the time of the assignment by Lewis to me.

Question. Did Mr. Magwire ever see it, to your knowledge?

Answer. I can't swear that he ever did see it, but I think that he has seen it; that I have shown it to him.

Question. What was the consideration of the purchase of Lewis's interest in those lots and improvements?

Answer. I gave him five hundred dollars.

Question. To whom did the improvements belong?

Answer. I never knew of any one setting up a claim to them except Lewis. They belonged to me after my purchase of them from him.

Question. In that assignment was any liberty given to Lewis to remove the improvements?

Answer. I do not remember whether there was or not.

Question. Who did remove them, and when?

Answer. Lewis removed them shortly after the assignment.

Question. After this removal by Lewis was the ground destitute of improvements?

Answer. It was; there was an old fence on it, but I believe that he removed that too.

Question. Have you now any doubt that the assignment above spoken of gave Lewis liberty to remove the improvements? What are your impressions about it?

Answer. My impression is that there was nothing in the assignment that gave Lewis permission to remove the improvements; but that it was understood between us that I did not want them, and that after he had made the bill of sale to me I sold the improvements back to him, with the understanding that he was to remove them.

Question. What did Lewis pay you for these improvements?

Answer. One dollar, I believe.

Question. How long after this assignment to you and Emerson did you proceed to make a boat-yard there?

Answer. Right away. I believe just so soon as Lewis got the horses off.

The further taking of these depositions is, by agreement, adjourned until three o'clock to-morrow afternoon.

M. S. CERRE,
Clerk.

Thursday, September 4th, 1851.

Pursuant to adjournment, the petitioners were present by their counsel at the hour and place named, as was also John Magwire, but the deponent, Joshua J. Childs, came not. Wherefore, at the request of said petitioners, I issued an attachment to compel said deponent's attendance at three o'clock to-morrow afternoon at my office; and, by consent of said petitioners and Magwire, adjourned the further taking of these depositions till to-morrow afternoon at three o'clock.

M. S. CERRE,
Clerk.

Friday, September 5th, 1851.

Pursuant to adjournment, said petitioners were, at the time named, present by attorneys, as was also said John Magwire, but the deponent, Joshua J. Childs, came not, on account of sickness. Where the taking of these depositions is adjourned until to-morrow afternoon at three o'clock.

M. S. CERRE,
Clerk.

Saturday, September 6th, 1851.

The further taking of these depositions is adjourned in consequence of the absence of the said deponent, Joshua J. Childs, until Monday afternoon at three o'clock.

M. S. CERRE,
Clerk.

Monday, September 8th, 1851.

The further taking of these depositions is adjourned in consequence of the absence of said Joshua J. Childs, until to-morrow afternoon at three o'clock.

M. S. CERRE,
Clerk.

Tuesday, September 9th, 1851.

Pursuant to adjournment, I resumed the taking of these depositions at the time and place named.

The examination of the said Childs being resumed, on the part of the petitioners, he says as follows:

Question. You say that Emerson was carrying on a boat-yard for

Magwire, was this the boat-yard that you and Emerson purchased of Magwire, and if so, what did you pay him for it?

Objected to by Magwire.

Answer. If I said that Emerson was carrying on a boat-yard, I said that I so understood. I understood it from Emerson, and from Mr. Magwire too. I think I had no other means of knowing that the yard was carried on by Magwire, when I spoke of purchasing the boat-yard. I meant the tools and appurtenances belonging to the yard, not the land itself, of course. I don't recollect what we paid for it. I think about nine hundred dollars, though I won't swear to it. This was the boat-yard. The boat-yard we purchased of Magwire was just south of Mr. Clark's saw-mill, and north of Market street. That is the place where Mr. Magwire carried on the boat-yard.

Question. About what time was this purchase made?

Answer. It was in the early part of the fall of 1846, I think.

Question. Did you and Primus Emerson enter into partnership for the purpose of boat-building, and carrying on the saw-mill business, immediately after or before the purchase of the boat-yard referred to above? If so, when and where?

Answer. I had nothing to do with the boat-building business until after they had commenced building boats on the litigated land in block No. 1. We entered into partnership before Emerson came down there. Our partnership was in boat-building at the place stated. I don't remember the date. It was before or about the time that we purchased Mr. Magwire's fixtures from him.

Question. Did Emerson and yourself understand that he was your partner in the leases that you had from Chambers?

Answer. Emerson and I were equally interested in carrying on the boat business and milling there. I know that Emerson and I together bought out Hall and Allen's interest in the lease, and the mill erected there. I don't remember that Exhibit C was mentioned in the bill of sale.

Question. Did you not consider that you obtained a transfer of Hall and Allen's interest in the lease mentioned as Exhibit C, as well as in the lease for the mill lot?

Answer. In purchasing the logs, &c., appertaining to their mill, and which were scattered all over the boat-yard, I considered that we purchased of them all the rights that they had there. We took the whole affair from them, and got whatever possession they had.

Question. Did you not consider that you got whatever interest Hall, Allen & Childs had in lease marked Exhibit C?

Answer. We surely had possession of all that Hall, Allen & Childs had under the lease marked Exhibit C.

Question. Did Emerson or Magwire acquire or take possession of the lots in question by any other right or claim than under you, as tenant of Chambers, knowing you to be such?

Answer. This is a difficult question for me to answer. Emerson and Magwire were there a long time after me.

Question. Did Emerson or Magwire take possession through or under you, knowing you to be the tenant of Chambers?

Answer. When I left there I sold out what I had to Emerson.

Question. Did Emerson, when he took possession of you, know that you were a tenant of Chambers'?

Answer. Emerson knew that we leased the mill lot of Chambers, certainly.

Question. Did you, at the time you surrendered possession, or when you were bargaining for the sale, tell him that you held the mill lots, and the other lots on which the logs were, as tenants at will of Chambers?

Answer. I don't know that I told him anything about the lease C at the time I sold to him. Mr. Emerson had occupied the lots with me for a year, and knew how I held them.

Question. You have stated that you purchased out Lewis' houses, in block No. 1, at $500, was the purchase made with your own money, or with that of another person; and if with the money of another person, who was that person?

Answer. I paid Lewis the money.

Question. From whom did you get that money?

Objected to by Magwire.

Answer. It is pretty hard to tell. I was receiving from $50,000 to $60,000 a year then?

Question. Did you get it from John Magwire or not?

Objected to by Magwire.

Answer. That is pretty hard to say too. I got a great deal of money from Mr. Magwire at that time. I got most of my money for boat-building, &c., through him at this time.

Question. Did you not account to Magwire for the money you received of him on account of boat-building?

Objected to by Magwire.

Answer. We did account to him for it.

Question. Did you ever account, or give to Magwire any receipt for the $500 paid to Lewis?

Answer. I don't know where the identical $500 paid to Lewis came from. If I got it from Mr. Magwire, I gave him probably a receipt for it.

Question. Did not you and Mr. Magwire have frequent conversations as to purchasing out Lewis, and did not Magwire furnish you with $500 for this express purpose?

Answer. Mr. Magwire and I often talked about that and our other business. I think that there was about $500 not credited to Mr. Magwire, which we paid to Lewis in that arrangement.

The further taking of these depositions is adjourned until to-

morrow afternoon at three o'clock, at the office of the clerk of the Circuit Court.

M. S. CERRE,
Clerk.

Wednesday, September 10th, 1851.

Pursuant to adjournment, said petitioners and said Magwire were present at the time and place named, but said Childs, the deponent, came not; therefore the further taking of these depositions is adjourned until to-morrow afternoon at three o'clock.

M. S. CERRE,
Clerk.

Thursday, September 11th, 1851.

Pursuant to adjournment, I resumed the taking of these depositions at the time and place named.

The said deponent, Joshua J. Childs, his examination being resumed on the part of the petitioners, says as follows:

Question. Did you not pay out other money to buy out other tenants of Chambers on block No. 1?

Answer. I bought at auction a shed that old Mr. Stoneking put up there. I paid a Dutchman there twenty-five dollars to move out of his house. I also gave an old Dutch woman ten dollars for the old house she occupied then.

Question. Were their tenements situate on different parts of this block, and were they the only tenements on this block that you at any time purchased?

Answer. They were on different parts of the land; they and Lewis's tenements were the only ones that I remember that I purchased.

Question. Were there any on the block which you did not purchase?

Answer. There was an old log-house.

Question. By whom was this log-house occupied at the time you made the purchase?

Answer. I don't know; I think that Lewis professed to have the management of it.

Question. From whom did you get the money to purchase out these last-mentioned tenants?

Answer. That is hard to tell, as I was receiving a good deal of money at that time. I kept a memorandum of the money that I spent in that way, with the understanding that Mr. Magwire was to refund it to me. I never credited it to him.

Question. Did Magwire pay that money back to you or not?

Answer. I received that amount of money from him, and never credited him with it.

Question. Was it understood, or not, between Magwire and your-

self, that you were never to pay back to him the money so received by you?

Ans. I so understood it.

Question. Did Magwire make a lease to you for a house of his on the corner of 9th & Chambers street for six months, for which you paid no rent, with the understanding that you were to lease to John Lewis said house free of rent, as part consideration of the purchase of said Lewis's lease aforesaid, or did you not?

Objected to by Magwire.

Answer. I believe that I had a lease from Mr. Magwire for a house up there, into which Lewis moved when he left those houses. I never collected or paid any rent for it, but I don't remember the lease now.

Question. Did you have a lease of any house in the neighborhood of 9th and Chambers streets from Magwire? if so, what were the terms of that lease, and with what understanding was the lease made?

Answer. I don't remember the terms of the lease, as I have not seen it for several years. I don't know whether there was any consideration or not; I never paid Magwire anything for it, nor did Lewis pay me anything. I believe that I leased it to Lewis with the understanding that he was to pay nothing for it.

Question. Were you, or were you not, ever told by any one that they had an interest in the four by four arpents of land in controversy, claimed by Magwire, upon a part of which your saw-mill in lot No. 3 was erected? and if so, what were you told?

Objected to by Magwire.

Answer. Yes; I have been told by a good many people that forty persons or more had an interest in it—Christy, and Wright, and Chambers, Labeaume, &c.

Question. Did any one else than the persons above named have an interest there? if so, name them.

Objected to by Magwire.

Answer. Mrs. Dean, Benjamin Jennings. There was a Mr. Bell living there. I don't know whether he claimed the land or not. A man up there, a preacher, I believe—I don't know his name—told me that he owned two brick houses on it. Templeton was his name.

Question. Did Martin Thomas ever tell you that he had an interest up there?

Objected to by Magwire.

Answer. He once told me that he had an interest in the claim.

Question. Do you remember whether any one else ever told you that they had an interest in that tract, than those mentioned in the answers to the two questions immediately preceding the last one?

Objected to by Magwire.

Answer. Of course, I heard that Mr. Magwire, Mr. Chambers, and Mr. Martin Thomas claimed an interest in the land.

Question. What interest did Martin Thomas claim in the land in controversy, and how did he claim it?

Objected to by Magwire.

Answer. I don't remember—a third or fourth, or some other part of it.

Question. Did Thomas claim to hold this interest as partner of any one?

Objected to by Magwire.

Answer. He told me that he held an interest in the claim that they were establishing there.

Question. The claim that who was establishing there?

Answer. Mr. Magwire and others. I never understood it through Mr. Magwire, but through Thomas. Magwire has often told me that Thomas had an interest there.

The further taking of these depositions is adjourned until to-morrow morning at 10 o'clock.

M. S. CERRE,
Clerk.

Friday, Sept. 12th, 1851.

Pursuant to adjournment, I resumed the taking of these depositions, at the place and hour named.

The examination of the said deponent, Joshua J. Childs, being resumed on the part of the petitioner, he says as follows:

Question. While you were tenant of William Chambers in the saw-mill and other lots heretofore mentioned, did you attorn to any other person as landlord of said premises of Chambers without Chambers's consent?

Answer. I don't know that I did.

Question. What acts did you on the premises with Magwire?

Answer. I never paid him any rent for anything there.

Question. Did you pay Chambers anything for said lots?

Answer. Hall, Allen & Childs paid him rent for them.

Question. Did Magwire get into possession then? if so, how?

Answer. Magwire never professed to have actual charge there, while I was there; what happened afterwards I don't know.

Question. Do you know whether Mr. Magwire procured any of the tenants of Chambers to treat him as landlord instead of Chambers?

Answer. I don't know that Magwire collected any rent there. He told me that he owned the land. I think he leased some of the houses there to other people. I do not remember that he offered to lease any of the premises to me. He told me that we, Emerson and Childs, should have a lease of the lands that we were occupying then under Chambers and others.

Question. Did you ever take any lease from Magwire, or recognize him as the landlord, or attorn to him for those premises?

Answer. I never took any lease from him, and never paid him any rents for those premises. I don't know that I in any case recognized him as landlord then; I thought that the property was his, from his representations to me.

Question. Do you know anything further in regard to this matter, material to this controversy, and pertinent to the matters about which you have been examined?

Answer. I don't remember anything further now, pertinent to this matter. I don't know what is pertinent to the matter now; that what I have already testified is pertinent to it.

The examination on the part of the petitioners being closed for the present, the said deponent being cross-examined on the part of Magwire, deposeth and saith as follows, to wit:

Cross-examination.

Question. At the time that Hall, Allen & Childs took a lease from Chambers, did you occupy any ground there besides what was embraced in the lease?

Answer. There are two leases. When we took the first one we occupied no ground at all. Under the second lease we occupied little or no ground except the mill lot. Brotherton & Judson occupied all the rest of the ground up to the mill, with their logs, &c.

Question. Did you build your office and ox-stable on the ground that Chambers leased to you?

Answer. I don't think that either of them stood on Chambers's ground, as described in the second lease.

Question. Did you know of any streets or lots there at the time you went there?

Answer. I had seen a plat of the grounds in which the streets were laid down, but I did not know where they ran, except lot No. 3, which was measured off to us.

Question. Were any other lots ever measured off to you?

Answer. No.

Question. Was rent ever demanded by Chambers or his agent, for any other lot except the mill lot, of you?

Answer. I think that the second lease was made at will for one dollar. I guess that is all that ever was paid, and I don't know that that was paid. The lease says it was paid.

Question. At the time you formed the partnership with Emerson, did you not know that he, Emerson, had a lease from Magwire for the ground on block No. 228, south of where the mill stood, and for the other vacant ground there?

Answer. At the time that Emerson and I agreed to go into partnership, I don't know that he had a lease then; I know he had a lease afterwards. If he had a lease at that time I didn't know it. Lewis was living there at the time; I bought him out.

Question. What did you buy from Lewis?
Answer. I bought the house that he had there.
Question. Did Lewis tell you that they belonged to him?
(Objected to by petitioners as irrelevant.)
Answer. He did.
Question. Did you take a bill of sale of Lewis?
Answer. I did.
Question. Is exhibit "J." hereto annexed that bill of sale?
Answer. I think that it is.
Question. Did you have any conversation with William Chambers, or any of his agents, about the purchase of Lewis's houses, as to who owned them?
(Objected to by petitioners as irrelevant.)
Answer. I talked to Mr. Sturgeon once about purchasing out Lewis. He did not object to my purchasing the houses.
Question. Do you know of any tenants moving into houses on block No. 288, under a lease from Magwire; and if so, when did they move in?
Answer. There were several tenants in there, who took leases from Magwire. I think that they took leases from Martin Thomas first.
Question. When were these leases made?
Answer. In the summer or fall of 1846, I think.
Question. Did you ever see those leases, or any of them?
Answer. I believe that I have seen them.
Question. Where were the tenements situated?
Answer. All over the block east of Main street; block No. 288, according to the city map.
Question. At the time those tenants under the leases made by Magwire, moved into the tenements on block No. 288, were those tenements occupied or vacant?
(Objected to by petitioners, as assuming a fact not proved.)
Answer. I cannot say.
Question. Do you know who moved into the old log house on block No. 288?
Answer. I think that a man whose name was Gibson moved into it.
Question. Was it vacant or occupied when he moved into it?
Answer. I think that it was vacant; I don't think that there was anybody a tenant with him.
Question. Do you know whether John Ingram moved into a house on block No. 288, under a lease from John Magwire?
Answer. I think that Ingram had a lease from Magwire; whether he had it when he moved in the house, or got it afterwards, I don't know.
Question. Do you not know that that house was vacant when Ingram moved in? I refer to the frame house between the log house and the river.

Answer. I think that it was vacant.

Question. How long did Ingram live in that house?

Answer. I don't recollect; I suppose that he was there a month or two; until about the time it was pulled down.

Question. Had you, or Hall, Allen & Childs, ever any possession of those houses under Chambers or his agents?

Answer. No.

Question. Do you not know that Emerson went there and erected a boat-yard on block No. 288, and occupied the ground west of Main street under a lease from Magwire?

(Objected to by petitioners, on the ground that the lease is not exhibited.)

Answer. I have seen a lease from Magwire to Emerson?

Question. Do you not know that Magwire at that time claimed to be the owner of the land? and how did you get that information?

Answer. I know that he claimed it. He told me and others told me. Tadd & Krum told me so. I think that Mr. Gamble told me that he thought Magwire's title to the land was good. Martin Thomas told me so, and fifty others.

Question. Did Chambers or his agents ever demand any rent from you after you and Emerson went into partnership there in boat-building, and how often?

Answer. I think so; I don't know how often. They generally called for the rent when it was due.

Question. Did they not refuse to receive rent from you?

Answer. They did. I tendered Sturgeon rent once, he didn't take it.

Question. Why did he not take it?

Answer. There was some hard feeling at the time, and he thought that we had forfeited the lease, and he wished to consult counsel.

Question. Did he ever call on you after for rent?

Answer. Yes.

Question. While you and Emerson were carrying on the business of boat-building, were any attempts made to take forcible possession of the ground occupied? If so, of how much of it?

Answer. There was fencing enough done there to fence in a small farm.

Question. Who built those fences, or superintended the building of them?

Answer. Isaac H. Sturgeon, Howard J. Christy, and Judge Schamburg, and after they were done Labeaume fenced up the balance.

Question. Were those fences put up with or against the consent of Emerson and yourself?

Answer. Against our consent.

Question. Did you and Emerson and the foreman in the yard resist the putting up of those fences?

Answer. We forbade them to put up the fences.

Question. How many men were engaged in putting up those fences?

Answer. From twenty-five to forty.

Question. Were they armed?

Answer. I saw no arms except the tools.

Question. Did you hear any of them say that they had arms?

Answer. I don't know that I ever did. I heard that they had arms.

Question. Did they remove any of the lumber of the yard, and how?

Answer. They threw it into the street, and so as to get it out of the way of their fences?

Question. Was your business and men stopped by reason of the fencing.

Answer. It interfered considerably with our operations. In fencing around the lots, one or two at a time, they stopped up our roads to the mill, so that it was difficult to get our timber wheels along. There was also so much excitement up there that our men could do no work for several days.

Question. Was a number of men kept there on guard? If so, how many?

Answer. There were many men there for some time; some employed by the litigants on the other side, and some of the city police were stationed there.

Question. What was the conduct of those men?

Answer. There were two or three fights there between these men. Rawlings whipped one of our men. There were threats and rethreats between Sturgeon and his party, who were keeping up the fences. Sturgeon and I had a cursing-match through a fence once. Magwire and I went for the police. The mayor said that he would send an officer up there. Bryan Mullanphy was mayor then. He sent the police up there. I was'nt there at the time that they got there. I understood that they interfered to prevent Emerson from pulling down the fence. I did not see this, however. The fences prevented our operations by stopping our roads to the mill. We had a bridge across a slough or gully, and they fenced in the road that led to this bridge, so that we could not get our logs across to the mill. The fences interfered in many ways with the hauling of the timber around there, and we could not get the timber to the mill, or away from it, so that it was stopped two or three days. We had previously worked day and night; had to work then only by day.

Question. Had you contracts then on hand for building steamboats? If so, how many?

Answer. We had two boats on the stocks at that time.

Question. Did the fencing and other operations of that party interfere with the building of those boats? How?

Answer. It did; they so fenced up the ground that the hands could not get to work.

Question. Were you put to any great expense to get lumber for the building of those boats? If so, state how much and in what way?

Answer. We had to buy other lumber instead of cutting it with our own mill, and we were retarded in working by the putting of the fences there.

Question. What was the difference between the cost of what you cut for yourselves and that which you bought?

Answer. I can't say; it cost us about double what it would have cost us to cut it.

Question. After this fencing went up, did you have to stop work at night in consequence of the fencing?

Answer. Yes.

Question. Do you know that any attempts were made to drive the men from the mill, and to get possession of it by force?

Objected to as asking what the witness had heard of others by petitioners.

Did the watchman tell you so?

Answer. I do not know it of my own knowledge; I heard that they had some difficulty there at night; I didn't know that they attempted to get possession of the mill.

Question. Do you know whether there was an attempt to fire the mill?

Question. Do you not remember to have told Magwire one morning that the mill had been fired back of the engine-room?

Answer. If such was the case, I do not remember it now.

Question. Do you know whether the mill was burnt down?

Answer. I do know that it was burnt down; I wasn't in St. Louis at the time.

Question. Had you any conversation, or did you talk with any one about rebuilding the mill? If so, with whom?

Answer. I talked with Mr. Magwire about it; I offered him $1500 for the wreck, with the privilege of rebuilding it where it was, and for the use of the property.

Question. Why was not the negotiation between yourself and Magwire, as to the rebuilding of the mill, carried out?

Answer. The land around was all fenced up, and I found that there was no possibility of getting the ground.

Question. Do you know what became of the engine, boilers, and iron?

Answer. I hauled them away.

Question. Did you buy them of any one? If so, of whom.

Answer. I applied to Mr. Magwire for them, and was told by him that Mr. Sturgeon had taken possession of them, and that he would have nothing more to do with them; I then applied to I. H. Stur-

geon; he told me that I must go to Rawlings for them, as he had them in his possession; I went then to Rawlings and conversed with him about; what was said I don't remember; but I went and took the things away with the understanding, and, as I thought, by the consent of all parties, that when called on I was to pay for the things whatever they were worth.

Question. At the time you applied to Magwire for them, was the lot on which the mill stood fenced up?

Answer. It and all the other lots on that block were fenced up.

Question. Before that fence was put up there, did you have the conversation with Magwire about rebuilding the mill?

Answer. I don't know, but I think not.

Question. Did you have any talk with Sturgeon about rebuilding the mill?

Answer. I think I did tell Mr. Sturgeon that I had offered to Magwire for the privilege of rebuilding the mill.

Question. Did Sturgeon object to its being rebuilt on the same site?

Answer. I think that he told me that he intended to keep it in his own possession; I believe that he told me that he had leased the land; I understood from him that he would not make any agreement with me as to rebuilding the mill.

Question. Did he tell you that he intended to keep possession of it by force?

Answer. I did not understand him to say that he would keep it by force or peaceably, but simply that he intended to keep possession.

Question. How long were you in partnership with Emerson?

Answer. A little over a year.

Question. At the time you dissolved with Emerson, did he assume the debts of the concern?

Answer. He did.

Question. Did he assume the account between Magwire and Emerson and Childs as it was?

Answer. He did.

Question. Do you know the situation of that account?

Answer. Not unless I had it.

Question. Examine Exhibit "K," and see whether you can answer the last question?

Answer. This paper is not in my handwriting; I have no doubt that it is what it purports to be, a correct copy of the account above referred to; but I could not swear to it as I have not compared it with the books.

Question. When you left there, did Emerson assume the account of Emerson & Childs with Magwire?

Answer. He did.

Question. Examine Exhibit "K," and see whether the $500 paid by you to John Lewis is not embraced in that account?

Answer. I cannot say that it is.

Question. Don't you know that the $500, charged on the 2d or 9th of October, is the $500 paid to Lewis?

Answer. I do not know that either of them is.

Question. Do you know whether or not there was a large balance due Magwire which Emerson assumed?

Answer. I know that there was a balance due to Magwire which Emerson assumed; I don't know how much it was; the account had never been closed.

Question. Do you know whether Emerson accounted to Magwire for the $500 you paid to Lewis?

Answer. I do not.

Question. You stated that John Ingram, H. B. Gibson, and some other person, went in there under leases from Magwire; examine Exhibits L, M, and N, hereto annexed, and state whether those are the leases?

Answer. They appear to be so.

Question. When you sold out to Emerson, did you transfer any lease to him?

Answer. I don't remember what was in the articles of sale; I don't think that any lease was in it; I just gave up to him all that I had there and left.

Question. Did Emerson ever recognize Chambers as his landlord?

Answer. That I don't know.

Question. So far as you do know, did he ever, while you were there, recognize him as such?

Answer. I don't know what Emerson did. I don't know that Emerson did any act by which to recognize Chambers as landlord. I tended them rent for Emerson & Childs, as every thing I did then was for the firm.

Question. At the time you tended that rent, do you not know that Emerson had a lease from Magwire?

(Objected to by petitioners unless the lease is produced.)

Answer. I have seen a lease from Emerson to Magwire.

Question. Do you not know that Emerson recognized Magwire and no one else as his landlord?

(Objected to by petitioners as indefinite.)

Answer. I know that Emerson had a lease from Magwire, in which was embraced all the land we occupied there. I cannot say that he recognized no one else as landlord, he may have recognized every body in town as such. We both thought that Magwire owned the land.

Question. If he had recognized any one else as landlord, would you have been likely to known it?

Answer. If he had done anything of that kind it would have pro-

bably come to my ears. I managed the business generally; he attended at the boat-yard. I don't remember any business transaction he had.

Question. Did you ever see him do any act or hear him say anything which recognized any other landlord than Magwire?

Answer. I don't think that I did.

Question. Do you know when Emerson moved away from there?

Answer. I do not know when he left, but I know that he has moved away from there.

Question. Who occupied the property after he left?

Answer. I have seen Carlisle and Kayser there.

Question. When did you see them there?

Answer. In 1848 and 1849, I think.

Question. Under whom did they hold possession?

(Objected to as hearsay by petitioners.)

Answer. I think that Kayser told me that they held under Magwire.

Question. How long did they continue in possession of that property?

Answer. A year or more I think. I think that they were there up to the time that the mill was burnt down.

The cross-examination on the part of Magwire is here closed.

By consent of said petitioners and John Magwire the further taking of these depositions is adjourned till Monday morning next, 15th September, 1851, at 10 o'clock.

M. S. CERRE,
Clerk.

Monday, September 15th, 1851.

Pursuant to adjournment, I resumed the taking of these depositions, and the said Joshua J. Childs being re-examined on the part of the petitioners, says:

Question. Do you know where Webster street was?

Answer. Yes; it was from the Mississippi river westwardly, and is north of and adjoining the mill lot.

Question. Do you recollect paying Hoyt, as agent of Chambers, $1, or any other sum, for the lease of the vacant lots, to put lumber on, or for any other purpose.

Answer. The lease says that the dollar was paid. So long a time has elapsed, that it is difficult to remember whether it was paid or not. I suppose it was paid.

Question. You have no doubt I suppose that you held those vacant lots as tenants of Chambers?

Answer. I only held two of them, as already stated, and I have already said how that was arranged between Brotherton and myself.

Question. Was the ground in block 288 vacant when you and Emerson formed a copartnership?

Answer. No.

Question. Was not Lewis's lot vacant?

Answer. It was not. The tenants were changing, however, all the time nearly.

Question. Did you not get Lewis's written lease, and keep it for some time?

Answer. I did have it for some time.

Question. Did you return Lewis's written lease to him, and, if so, by whose directions?

(Objected to by Magwire.)

Answer. I returned it to him. I think that it was done at Mr. Magwire's request, though I am not certain that he told me to do so.

Question. Did you know at the time you had that lease whom it was from?

Answer. Yes; it was from Colonel Chambers.

Question. Did Mr. Magwire, at any time prior to its being returned, know from whom it was?

(Objected to by Magwire.)

Answer. I think he did, though I do not know that he ever read the lease.

Question. Have you any doubt at all that Magwire knew that Lewis, Peltre, and others were at that time tenants of Chambers?

(Objected to by Magwire.)

Answer. I think that Mr. Magwire knew that Chambers claimed the land, and that these men were his tenants.

Question. Did you act as agent or friend of Mr. Magwire in attempting to get possession of the houses and premises in block No. 288 from the tenants of Chambers?

(Objected to by Magwire.)

Answer. I helped to get some leases there to Thomas. Thomas came there to see me, and I advised the men to sign the leases. I advised the men to sign the three leases that Mr. Magwire has exhibited here. I did this at Magwire's request.

Question. Did Magwire consult with you as to the best way of getting possession of the premises there from Chambers's tenants?

(Objected to by Magwire.)

Answer. Mr. Magwire used to talk to me about getting possession of the land.

Question. Did you and he advise as to getting possession of the different houses?

(Objected to by Magwire.)

Answer. He often talked to me about the property.

Question. Did he come to the conclusion that it was better to wait until Colonel Chambers should go to Kentucky before pouncing upon the property?

Answer. I do not remember that Colonel Chambers was here at the time Mr. Magwire got possession of the houses.

Question. At the time Mr. Magwire was talking to you about the best way of getting possession from Chambers's tenants of the houses and lots, did you not inquire of Sturgeon in regard to buying out Lewis's lease, and make proposals for the purchase?

(Objected to by Magwire.)

Answer. I have already stated that I have applied to Sturgeon to purchase Lewis off, and Sturgeon to give a lease for Colonel Chambers. This was subsequent to Magwire's claiming the land.

Question. Was that proposition for the purchase of Lewis's place made at Magwire's request or not?

(Objected to by Magwire.)

Answer. I don't know that Mr. Magwire requested me directly to purchase it. I consulted with him about it.

Question. Did the tenants of Chambers, in the houses on block No. 288, receive leases from Magwire for the houses they were then living in, or did they change about from one house to another on the same block, and receive leases for the houses into which they changed, or in what manner did they get the leases?

(Objected to by Magwire.)

Answer. One Ingram moved from one house to another, on the same block, and took his lease for the house he moved into. The old woman received, I think, a lease for the house in which she was at the time.

Question. Was the lumber that was removed by Sturgeon, &c., on the east or west side of Main street?

Answer. On the west of Main street.

Question. Did Sturgeon and others, before removing it, propose to remove it wherever Emerson and Childs might desire?

(Objected to by Magwire.)

Answer. I do not remember. They appeared very accommodating (ironical). I think Mr. Sturgeon did ask me once where I wished to have the lumber removed.

Question. Were you compelled to stop the mill because of the fencing?

Answer. Yes. I couldn't get logs to it.

Question. Did Mr. Magwire tell you why he kept away, and left you and your men to do the fighting?

(Objected to by Magwire.)

Answer. I don't know that Mr. Magwire kept away. He was there at times. Mr. Magwire has stated to me, that, he thought that they would like to kill him.

Question. What would you have given for the wreck of the mill after the fire, without the use of the property west of Main street?

(Objected to by Magwire.)

Answer. I would not have rebuilt the mill there. I would have

thought from $300 to $500 the worth of the wreck, if it had to be removed. I considered the location and the use of the ground worth four times as much as the wreck.

Question. When you tendered the money for the rent of the mill lot, to Sturgeon, was it done under the advice of Mr. Magwire?

(Objected to by Magwire.)

Answer. I think that Mr. Magwire advised me to do so.

Question. Did Emerson have, at the time, a lease from Magwire for the same mill lot?

Answer. I don't know that Emerson had a lease for that mill lot. I don't remember that the lease from Magwire to Emerson took in the mill lot.

The petitioners here closed their examination.

The cross-examination by Magwire.

Question. Do you know whether Ingram and Gibson were ever tenants of Chambers?

Answer. I do not.

Question. At the time you bought out John Lewis, did you take any assignment of any lease from him?

Answer, No.

Question. Did Chambers or his agent claim, in their conversations about the purchase from Lewis, the building you bought from Lewis, or any interest in them?

Answer. I think not.

Question. Did Chambers or his agent ever demand any rent from you for the lot on which the mill stood, after the time they told you the lease was forfeited?

Answer. After the time that we tendered the rent to Sturgeon, I met him once on Broadway, and he told me that he concluded to accept the rent.

Question. What reason did he give for not accepting it?

Answer. He said that the lease was forfeited.

Question. What was the amount of damage sustained by Emerson & Childs, by reason of the boat-yard being fenced, and their timber being hauled off?

(Objected to by petitioners, because it does not arise out of the examination, and because witness is a party to the record.)

Answer. I think we suffered very materially, to the amount of from $3000 to $5000. I do not recollect the precise amount of damages, though I once made a memorandum of them. It broke up our business.

Question. Did you ever hear any one who was engaged in fencing the boat-yard say, whether there was an arrangement by the same persons, that certain persons should be shot down if resistance should be made?

(Objected to as hearsay by petitioners.)

Answer. I never heard it directly from the parties, but I have heard that there was such an arrangement made; from whom I heard it, I don't know.

And further this deponent saith not.

J. J. CHILDS.

State of Missouri, County of St. Louis, *ss.*

Be it remembered, that at the office of the clerk of the St. Louis Circuit Court, the foregoing deponent, Joshua J. Childs, who resides in the city of St. Louis, having been duly sworn to testify the truth as to the matter in the annexed petition set forth, was duly examined as to the same, on Saturday the thirtieth day of August, 1851, between the hours of three o'clock and seven o'clock in the afternoon, and between the same hours on the 1st, 2d, 3d, 9th, and 11th days of September, 1851; and on Friday, the 12th day of September, 1851, between the hours of ten o'clock in the forenoon, and seven o'clock in the afternoon, and between the same hours of the day on Monday, the 15th day of September, 1851: that his said examination was by me reduced to writing on the several days aforesaid: that the same was by me distinctly read to deponent; and that he having been duly sworn as to the truth of said depositions, subscribed the same in my presence, on the 15th day of September, 1851, at the place and between the hours aforesaid.

Witness my hand and the seal of the St. Louis Circuit Court, affixed at office, the day and year last aforesaid.

[SEAL.]

M. S. CERRE,
Clerk.

Thomas Harris's Testimony.

Thomas Harris, sworn on behalf of defendant, says:

I came to St. Louis on the 20th September, 1829. Don't know much of Lapsley, but have seen him several times; have been at his tan-yard; never lived with him. I knew Labeaume's ditch, lived on the property in 1831, the very spot where tan-yard was. I bound myself three years to Wilson to learn tanning; began in spring of 1831. Before Wilson, Lapsley occupied the tan-yard, and carried on butchering also. I was with Wilson about six or eight months, till he sold out. Wilson bought his lease of Lapsley. Lapsley, I understood, held under Christy and Chambers. The ditch ran up to Broadway, and the premises ran to the south ditch, and north to Cochran's mill. The house was an old log-house, and looked as if it had been built for some years when I went there. The tan-yard was fenced east of Broadway. Wilson sold his lease to Powell and Martin Thomas. Powell contracted for it. The tan-yard and ground ran west of river some 300 or 500 feet.

Cross-examination.

It was fenced when I went to live with Wilson. The tan-yard and inclosures lay east of where now Main street is. Powell and Thomas didn't carry on business long after Wilson sold; not more than one year. I think I saw a lease from Lapsley to Wilson, but not Lapsley's lease. The inclosure ran north of the ditch from 300 to 500 feet in Wilson's time. I have been there often. Saw no fence after Powell and Thomas left the premises; think they took it off. Had no conversation with Thomas about the premises. I heard Powell say that he had lot to lease.

Re-examined.

The road where it crosses the ditch is about 200 feet distant from the river. The tannery was between this road and the river. There was a house between Broadway and that road, occupied by Walker, in 1830, and afterwards by Ranny, or (Raney).

Cross-examined.

I know of no inclosure north of ditch till some distance up.

Edward Tanner's Testimony.

Edward Tanner, sworn on behalf of defendants, says:

I have lived in St. Louis 17 years; knew Mr. Christy, but not well. I knew Col. Chambers; was his agent in collecting rents in 1839 when he left, till his return, and occasionally before that, in 1858. He furnished me a rent-roll. I know Labeaume's ditch and property north of it. Collected rents of Walters, Probst, and Lewis. Their houses were below Main street and north of the ditch, and south of Webster street. Sometimes I went to the houses to collect rent. Walters's house was below the old brewery and east of Main street; was an old log-house in 1838; had been standing a long time. Probst's house was about halfway down the bank on the river east of Main street, and a little further up than Walters's. It was an old house; Probst repaired it some. Lewis's house was east of Main street and north of Walters'. Lewis built that. These parties held under written leases; have seen them. They were for term of five years, and may have been renewable. Walters's and Lewis's were for five years. At that time, no house west of Main street. Col. Chambers, in 1842 or '3 built a house west of Main street. I paid taxes for Chambers; paid taxes in 1839 and '40 on his North St. Louis property, but can't say that this property was included. Chambers claimed land west of Main street; I saw him showing lots west of Main street as belonging to him.

Cross-examined.

Walters's and Probst's houses were on same range, and same distance from the ditch. The Old Brewery was near the line south of the ditch, and these houses were about 150 feet from the brewery. Walters had an inclosure about his slaughter-house, about in size 40 or 50 feet by 20 or 30 feet. I had the leases from Mr. Chambers of Lewis and Walters. Can't say that I had Powell's lease. Probst kept a grocery. I never knew Lapsley there.

Bill of Exceptions.

Defendants then offered in evidence a letter of one Lapsley to William Chambers, and one from said Chambers to said Lapsley, as follows:

Letter of Lapsley to Chambers.

ST. LOUIS, MISSOURI, February 14th, 1825.

DEAR SIR:

I take the liberty of writing to you concerning some of your property that lays north of St. Louis, laid out by Mr. Christy, yourself and others being proprietors. I wish to purchase of you, sir, lots No. 1 and 2 on the river bank, for the purpose of erecting a small tannery, if you will sell them. Mr. Christy has informed me that he thought you would dispose of any of your lots in that purchase. Also, Mr. Christy has told me that he was under written obligations to his partners not to sell for less than $250 per lot. But he has some property of his own which he could sell much cheaper.

I think, sir, if you can let me have them on credit, as my capital is small to begin with, that I can in time give a reasonable price for them. I wish you to write as soon as possible, and the lowest you can take for them, and as long a credit as possible; for the season is getting advanced, and I must prepare to settle myself.

Nothing more, but write in hast(e). To which you will confer a particular favor.

Sir, I am yours,

SAML. LAPSLEY.

MR. WM. CHAMBERS.

Letter of Chambers to Lapsley.

MIDDLETOWN, KY., March 28, 1825.

SIR:

Your letter of the 14th of Feb. last came to hand but a few days ago, in which you address a wish to purchase two lots in North St. Louis, numbered 1 and 2, both of which are river lots, and not for

sale. If any lots situated some distance out from the river would answer your purpose, I would have no objections to selling my interest in them. Or if you thought proper to put up temporary buildings on them, I would give a lease on the lots 1 and 2, and you might remove your improvements of(f) when you please.

Yours, &c.,

WM. CHAMBERS.

To Mr. Samuel Lapsley, at St. Louis.

Bill of Exceptions.

To the reading of these letters the plaintiff at the time objected, on the ground that said letters were not competent evidence against the plaintiff in this case; but the court overruled plaintiff's objections, and allowed said letters to be read, and the plaintiff at the time duly excepted.

Defendants then offered in evidence survey No. 3332, as follows:

Survey No. 3332, by William Milburn.

Beginning at a stake set on the right bank of the Mississippi river, the lower and most eastern corner of a tract of 374 arpents, surveyed on the 2d day of March, 1799, by Antoine Soulard, Spanish surveyor-general of Upper Louisiana, for Louis Labeaume, in virtue of an order from the lieutenant-governor, Zenon Trudeau, dated the 15th day of February, 1799, and now No. 3333 of the United States surveys of private confirmed claims in Missouri; said lower corner of the Labeaume tract being the upper and most northern corner of this survey of Joseph Brazeau; and from it the remains of a stone house bears S. 57 deg. 55 min. W., distant 129 links. Thence S. 23 deg. E. along the right bank of the Mississippi river, the easterly boundary of this survey, at 11 chains 66⅔ links, equal to four arpents, a stake set in rear of the workshop attached to Patterson's saw-mill, the lower and most eastern corner of this survey. Thence 74 deg. 30 min. W., with the southern boundary of this survey, it being 68 links southward of the northern boundary line of a tract surveyed for Peter Chouteau, and numbered 671; at 1 chain 79½ links intersecting the west front of the aforesaid workshop, and 10 links northward of the southwest corner thereof; at 11 chains 76⅔ links a limestone, 15 inches long, set into the ground so deep, 8 inches wide, and 6 inches thick, the most southerly corner of this survey; from which the stone at the southwest corner of Second street and East Brooklyn street, of the city of St. Louis, bears S. 28 deg. 30 min. E., distant 55 links, and the stone at the northeast corner of the said street bears N. 57 deg. 15 min. E., distant 111 links. Thence N. 23 deg. W., with the westerly boundary of this survey, at 68 links, intersecting the northern boundary of Peter

Chouteau's survey, No. 671, 3 chains 28 links eastwardly from the northward corner of said survey, at 9 chains 58⅔ links intersecting the east boundary of the St. Louis common fields, and of the field-lot confirmed to Gabriel Dodier's representatives, survey No. 3410; at a limestone, 21 links north of the southeast corner of said lot of Dodier, at 11 chains 66⅔ links, equal to 4 arpents, a limestone, 12 inches long, at Louis Labeaume's southern ditch, being on the southern boundary of this tract, survey No. 3333. Thence N. 74 deg. 30 min. E., with the old ditch, Labeaume's southern boundary, and the northern boundary of this survey, at 76⅔ links intersecting the eastern boundary of the St. Louis common fields, and of Dodier's lot, at an old stone, 2 chains 12⅓ links northwardly from the last-mentioned intersection, on said common-field line, and 2 chains 33⅓ links from the southeast corner of said Dodier lot, at 11 chains 76⅔ links to the beginning corner.

Plaintiff objected to the reading of said survey, on the ground that the same was not competent evidence in this case; but the court overused plaintiff's objection, and allowed said survey to be read, and the plaintiff at the time duly excepted to the opinion of the court.

Defendant offered patent to Joseph Brazeau or representatives, as follows:

Patent to Joseph Brazeau.

The United States of America to all whom these presents shall come, greeting:

Whereas, there has been deposited in the General Land Office a patent certificate, numbered 1250, of the recorder of land-titles at St. Louis, Missouri, whereby it appears that on the 22d day of September, 1810, the board of commissioners, appointed in pursuance of the fifth section of the act of Congress, approved the 2d day of March, 1805, entitled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," confirmed to Joseph Brazeau four arpents of land, situate about three miles north of the town of St. Louis; and that on the 14th day of June, 1811, they issued their certificate, No. 983, for the confirmation, as per the fourth section of the act of Congress of the 3d of March, 1807, entitled "An act respecting claims to land in the territory of Orleans and district of Louisiana," and that from a careful examination of the records, it is the opinion of the recorder's office that the four arpents of this confirmation were intended to mean four arpents in front, along the Mississippi river, by four arpents in depth, towards the west, or sixteen superficial arpents.

And whereas, it further appears from the aforesaid patent certificate that the said land has been surveyed in strict conformity with the decision of the 25th July, 1851, of the secretary of the interior, as appears from the plat and transcript of survey No. 3332, which

accompanied said patent certificate, the said plat and transcript having been authenticated by M. Lewis Clarke, surveyor-general of Illinois and Missouri, under date of the 26th of February, 1852; which survey, No. 3332, contains $13\frac{61}{100}$ acres, equal to 16 arpents of land, being situate in township 45, north of the base line of range 7, east of the fifth principal meridian, in the State of Missouri, and which is platted and described as follows, to wit:

Beginning at a stake set on the right bank of the Mississippi river, the lower and most eastern corner of a tract of 374 arpents, surveyed on the 2d day of March, 1799, by Antoine Soulard, Spanish surveyor-general of Upper Louisiana, for Louis Labeaume, in virtue of an order from the lieutenant-governor, Zenon Trudeau, dated the 15th day of February, 1799, and now No. 3333 of the United States surveys of private confirmed claims in Missouri; said lower corner of the Labeaume tract being the upper and most northern corner of this survey of Joseph Brazeau; and from it the remains of a stone house bears S. 57 deg. 55 min. W., distant 129 links. Thence S. 23 deg. E., along the right bank of the Mississippi river, the easterly boundary of this survey, at 11 chains $66\frac{2}{3}$ links, equal to four arpents, a stake set in rear of the workshop attached to Patterson's saw-mill, the lower and most eastern corner of this survey. Thence 74 deg. 30 min. W., with the southern boundary of this survey, it being 68 links southward of the northern boundary line of a tract surveyed for Peter Chouteau, and numbered 671; at 1 chain $79\frac{1}{2}$ links intersecting the west front of the aforesaid workshop, and 10 links northward of the southwest corner thereof; at 11 chains $76\frac{2}{3}$ links a limestone, 15 inches long, set into the ground so deep, 8 inches wide, and 6 inches thick, the most southerly corner of this survey; from which the stone at the southwest corner of Second street and East Brooklyn street, of the city of St. Louis, bears S. 28 deg. 30 min. E., distant 55 links, and the stone at the northeast corner of the said street bears N. 57 deg. 15 min. E., distant 111 links. Thence N. 23 deg. W., with the westerly boundary of this survey, at 68 links, intersecting the northern boundary of Peter Chouteau's survey, No. 671, 3 chains 28 links eastwardly from the northward corner of said survey, at 9 chains $58\frac{2}{3}$ links, intersecting the east boundary of the St. Louis common fields, and of the field lot confirmed to Gabriel Dodier's representatives, survey No. 3410; at a limestone, 21 links north of the southeast corner of said lot of Dodier, at 11 chains $66\frac{2}{3}$ links, equal to four arpents, a limestone, 12 inches long, at Louis Labeaume's southern ditch, being on the southern boundary of this tract, survey No. 3333. Thence N. 74 deg. 30 min. E., with the old ditch, Labeaume's southern boundary, and the northern boundary of this survey, at $76\frac{2}{3}$ links intersecting the eastern boundary of the St. Louis common fields, and of Dodier's lot, at an old stone, 2 chains $12\frac{1}{3}$ links northwardly from the last-mentioned intersection, on said common field line, and

2 chains 33⅓ links from the southeast corner of said Dodier lot, at 11 chains 76⅔ links to the beginning corner.

The foregoing description of the metes and bounds of said survey No. 3332, being accompanied in the said transcript of survey, certified on the 26th day of February, 1852, by Surveyor-General Clarke, by the following statement of surveys of private claims, which interfere with survey No. 3332, of Joseph Brazeau, before described, to wit:

Survey No. 671, of Peter Chouteau, founded on a concession of the 16th October, 1799, by the lieutenant-governor, C. D. Delassus, to Pierre Chouteau. The grant was surveyed on the 10th March, 1803, by Antoine Soulard, as certified by him on the 17th of June, of the same year, to the amount of 133 arpents; but said Chouteau, on the 25th of January, 1809, renounced, before the old board of commissioners, all claim to 39 arpents and 99 perches of the land claimed, which interfered with land heretofore surveyed, leaving the quantity at present claimed 93 arpents and 1 perch. In consequence thereof, the said board confirmed to Pierre Chouteau 93 arpents and 1 perch, on the 29th of May, 1811, as per certificate No. 671, under the 4th section of the act of the 3d March, 1807; and they ordered that the same be surveyed so as not to interfere with the field lots of the Little Prairie adjoining the town of St. Louis.

This confirmation was surveyed by the United States as No. 671. It was duly recorded, and a transcript survey was returned to the recorder of land titles on the 4th of November, 1822. That officer issued patent certificate No. 289 for said survey No. 671, on the 28th of November, 1823, which was succeeded by a patent on the 26th of March, 1824. See Book C., pages 377, 378 and 379; also Minutes of the Board of Commissioners, book No. 3, pages 443 and 445; No. 5, page 159; and Confirmation Certificate, No. 671, in the Recorder's office. And see Record Book, B., page 221, Register of Private Surveys in Missouri, page 19. The letters of the commissioners of the General Land Office, of July 19, 1841, 11th March and 15th December, 1847, to the surveyor-general; and the surveyor-general's letters to the said commissioner, of the 10th June, 1847, and 8th November, 1847, all in the surveyor-general's office; also American State Papers, vol. 2, page 585, edition of 1834.

2d. Survey No. 1410, Jacque Clamorgan, assignee of Ortez, under Gabriel Dodier, a concession of two by forty arpents, bounded south by Kerichereau and north by Debruisseau, to Gabriel Dodier; and survey of the same certified on the 23d May, 1772, by Pedro Piernas, lieutenant-governor of the Spanish settlement of Illinois, and Martin Duralde, a surveyor duly appointed by said Piernas. Sale by Margaret, widow of Gabriel Dodier to John B. Ortez, the 10th January, 1810; sale by Ortez and wife to Jacque Clamorgan, the 14th April, 1810. Confirmation to Gabriel Dodier's representatives, by the act of the 13th June, 1812, as per proof before Recorder Hunt,

on the 13th August, 1825, pursuant to the first section of the act of 13th of May, 1824. Surveyed by the United States in October, 1826, as No. 1410; but no transcript survey as yet returned to the recorder for a certificate of confirmation. See Livre Terrien, No. 2, pages 35, 36, 67 and 68; Book F., pages 90 and 91; Bates' Minutes, pages 74 and 128, and his Decision, page 1; and Hunt's Minutes, No. 2, page 147, in the recorder's office; see Book of the Field-notes of Private Surveys in Missouri, No. 18, and Hunt's list, No. 666, in the office of the surveyor-general; also American State Papers, vol. 2, page 276, edition of 1834.

3d. The Brazeau survey interferes also with survey No. 2571, dated March, 1822, of a location of 160 acres, made on the 7th April, 1817, by Thomas Rector and Elias Bancroft, for Henry Peyroux, under Francis Hamelin, to whom had been issued, on the 30th November, 1815, certificate No. 184, for the said 160 acres, under the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquake." It appears that survey No. 2571 was returned to the recorder on the 24th January, 1824, and then patent certificate No. 408 was issued, on the 27th April, 1833, and transmitted to the General Land Office; but the commissioner having decided in his letter of the 15th January, 1839, to the surveyor-general, that this tract not being land the sale of which was authorized by law, Peyroux's claim to it must be regarded as invalid. No notice is therefore taken of survey No. 2571. See Register of New Madrid sections, in the Recorder's office, Book A., page 105; Register of Private Surveys in Missouri, page 70; and the aforesaid letters of the 15th January, 1839, in this office.

Now know ye that there is therefore granted by the United States unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid survey No. 3332, saving and reserving any valid and adverse rights which may exist to any part thereof.

To have and to hold the said tract of land according to the said survey No. 3332, unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs and assigns, forever, with the saving and reserving aforesaid.

In testimony whereof, I, Millard Fillmore, president of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this 25th day of March, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-sixth.

By the president,

MILLARD FILLMORE.
By M. P. FILLMORE,
Secretary.

JAS. S. WILSON,
Acting Recorder of the General Land Office ad Interim.

Recorded Vol., pages 172, 173, 174, 175, 176, 177, 178.

Bill of Exceptions.

Plaintiff objected to the reading of said patent, on the ground that the same was not competent evidence in this cause; but the court overruled the plaintiff's objection, and allowed to the same to be read; and the plaintiff duly excepted.

A. Renard's Testimony.

Defendants offered in evidence the testimony of A. Renard and Wilson Prim from the record of testimony filed in the said case of Magwire *v.* Vice, in the Court of Common Pleas.

Adolph Renard, sworn on behalf of defendant says: I am United States recorder of land titles in the city of St. Louis.

(Witness produces U. S. patent No. 3332.)

This patent came into my hands from the commissioner of the General Land Office. (Witness produces Livre Terrien, No. 5.) Page 10 is the commencement of the grant to Esther. This book purports to contain grants from Don Zenon Trudeau, governor of Upper Louisiana.

(Witness is shown two papers purporting to be copies of patent certificates No. 1249 and 1250.)

These are copies of the patent certificate to Labeaume and to Brazeau. I was recorder of land titles at the time.

Cross-examined.

There are six books of Livre Terrien. I have been recorder since 1847. Before that, for ten years, I had been employed in the recorder's office; I have also been employed in the surveyor-general's office since 1837. The French language is my mother tongue, but can read Spanish. There are in the office many original petitions; on the back of these petitions are the numbers and pages of the books in which they are recorded. I have seen the signature of Governor Trudeau proved; M. P. Leduc and Pascal Cerre used to prove it. It is believed that the whole of the record of the Esther grant, except the signature, are in the handwriting of Mr. Clamorgan; some of them are in the handwriting of Soulard; and some of Governor Trudeau himself; and some of a Mr. Bonner, as is believed; the flourish in the margin is in the handwriting of Mr. Gratiot.

(Original concession to Esther shown witness.)

The body of this paper is in the handwriting of Mr. Clamorgan; the signature of Gov. Trudeau I believe to be genuine. When I speak of Clamorgan, I mean Jacque Clamorgan. The writing on the margin of the Esther grant, in Livre Terrien, I believe to be

also in the handwriting of Jacque Clamorgan. I am not a practical surveyor, and never have been. The Livre Terrien came into the office of the recorder of land titles in 1806; before that they were kept by the governor. The translation of the Esther grant, signed by me, was made by me. The patent No. 3332 was sent to me by the commissioner of the General Land Office for the legal representatives of Brazeau, and has been in my possession ever since, and is now. Mr. Hill once claimed it for the legal representatives of Brazeau, but I declined to give it to him, not being certain that he was entitled to receive it.

Wilson Primm's Testimony.

Wilson Primm, sworn on behalf of defendant, says:

(Witness is shown a paper marked Exhibit 23, purporting to be a copy of letter from P. Chouteau to commissioner of General Land Office.)

I know the signature of P. Chouteau, Sr. This is an exact copy made by me of a letter which I found in the office of the commissioner of General Land Office at Washington. The signature was the genuine signature of P. Chouteau, Sr. The body of the letter is in the handwriting of Rene Paul. P. Chouteau didn't understand English very well. Rene Paul understood both English, French, and Spanish. I copied it letter for letter and point for point.

Protest of P. Chouteau.

Defendant gave in evidence protest of P. Chouteau, as follows:

St. Louis, May 20th, 1826.

Sir: As soon as I was apprised that a New Madrid certificate, No. 184, issued in favor of Henry Peyroux, for 160 acres, has been so located in township 45 N., range 7 E. of principal meridian, as to cover the whole of a small tract of sixteen arpents, which I had purchased from Mr. Joseph Brazeau, to whom it had been confirmed by the old board of commissioners, and also part of another tract of ninety-three $\frac{1}{0}$ arpents, confirmed to me by the same board, I protested, on the 24th day of June, 1818, against such an act, before General William Rector, their surveyor-general; but understanding that application has been made to you for a patent by the proprietor of said certificate, and apprehensive that you had not yet been made acquainted with the facts above stated, I have thought it necessary to do it, and to request you, at the same time, to postpone issuing a patent in favor of the aforesaid location. The confirmation referred to in favor of Joseph Brazeau and myself are Nos. 980 and 671.

I have the honor to be, very respectfully, sir,

Your most obedient and humble servant,

PIERRE CHOUTEAU.

The Hon'ble George Graham,
Comm'r General Land Office.

Defendants gave in evidence patent certificate No. 1250 and 1249, as follows:

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 26th of February, 1852.

Patent Certificate No. 1250.

Read in the case of Magwire *v.* Vice, and West *v.* Cochran.

It is hereby certified, that on the 22d of September, 1810, the board of commissioners appointed, in pursuance of the fifth section of the act of Congress, approved the 2d of March, 1805, entitled "An Act for ascertaining and adjusting the claims to land within the territory of Orleans and district of Louisiana," confirmed to Joseph Brazeau four arpents of land, situate about three miles north of the town of St. Louis, and that on the 14th of June, 1811, they issued their certificate, No. 983, for that confirmation, as per the fourth section of the act of Congress of the 3d of March, 1807, entitled "An Act respecting claims to land in the territories of Orleans and Louisiana." It is further certified, that from a careful examination of the record, it is the opinion of this office that the "four arpents" of this confirmation were intended to mean four arpents in front along the Mississippi river, by four arpents in depth towards the west, or sixteen superficial arpents. It is further certified, that the same has been surveyed in strict conformity with the decision of the Hon. A. H. H. Stuart, secretary of the department of the interior, of the 25th of July, 1851, as appears from the accompanying plat and transcript of survey No. 3332, authenticated and returned on this day to this office by M. Lewis Clarke, surveyor-general of Illinois and Missouri. Now, therefore, be it known, that Joseph Brazeau, or his legal representatives, is entitled to receive a patent for thirteen acres and sixty-one hundredths of an acre, equal to sixteen arpents of land; the contents of said survey No. 3332, which is situated in township numbered 45, north of the base line, and range numbered 7, east of the fifth principal meridian, in the State of Missouri.

Signed, ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 26th of February, 1852.

Patent Certificate, No. 1249.

Read in the case of Magwire *v.* Vice, and West *v.* Cochran.

It is hereby certified, that on the 15th of February, 1799, Zenon Trudeau, lieutenant-governor of the Spanish province of Upper Louisiana, made a concession of about 360 arpents of land to Louis Labeaume, and that on the 2d of March of the same year, it was surveyed by Antoine Soulard, surveyor of the same province, to the

amount of 374 arpents, situated three miles north of the town of St. Louis. It is further certified, that the board of commissioners, appointed in pursuance of the fifth section of the act of Congress, approved the 2d of March, 1805, entitled "An Act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," confirmed on the 22d of September, 1810, 356 arpents to Louis Labeaume, agreeably to the aforesaid concession; and that on the 14th of June, 1811, they issued their certificate, numbered 982, for that confirmation, under the fourth section of the act of Congress, approved the 3d of March, 1807, entitled "An Act respecting claims to land in the territory of Orleans and Louisiana." It is further certified, that the Hon. A. H. H. Stuart, secretary of the department of the interior, decided, on the 25th of July, 1851, that those claiming under Labeaume are entitled to a patent for the land, according to Soulard's survey and Labeaume's possession, and that he directed the necessary survey to be made, and a patent issued in conformity therewith. It is further certified, that the lines of the said Soulard's survey have been retraced, in conformity with the decision referred to, as appears from the accompanying plat and description of survey, numbered 3333, authenticated and returned this day to this office by M. Lewis Clarke, surveyor-general for Illinois and Missouri.

Now, therefore, be it known, that Louis Labeaume, or his legal representatives, is entitled to receive a patent for three hundred and thirty-nine acres and sixty-eight hundredths of an acre, equal to $399\frac{68}{100}$ arpents of land, the contents of said survey No. 3333, which is situate in township numbered 45, north of the base line, and range 7, east of the fifth principal meridian, in the State of Missouri.

Signed, ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

To JUSTIN BUTTERFIELD, ESQ.,
Commissioner of the General Land Office, City of Washington.

Defendants gave in evidence New Madrid certificate to H. Peyroux, No. 184, and survey of same as follows:

New Madrid Certificate, No. 184.

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, November 30th, 1815.

I certify that a lot of one arpent, in the town of New Madrid, in the county of New Madrid, which appears from the books of this office to be owned by Henry Peyroux under Francis Hamlin, has been materially injured by earthquakes; and that in conformity to the provisions of the act of Congress of 17th February, 1815, the said Henry Peyroux, or his legal representatives, is entitled to locate any quantity of land not exceeding one hundred and sixty acres, on

any of the public lands of the Territory of Missouri, the sale of which is authorized by law.

FREDERICK BATES.

This witnesseth, that for and in consideration of the sum of three hundred and sixty dollars, to me in hand paid by Thomas Rector, the receipt whereof I hereby acknowledge, I have granted, bargained, sold, assigned, and transferred to the said Thomas Rector, all my right, title, claim, and interest in and to the within certificate, and the land to be located by virtue thereof.

As witness my hand and seal at St. Louis, this sixth day of December, 1816.

TAYLOR BERRY. [SEAL.]

Assignment of Certificate No. 184.

This witnesseth, that for value received, the receipt of which is hereby acknowledged, I have granted, bargained, sold, assigned, and transferred to Elias Barcroft, all my right, title, claim, and interest unto the undivided three-fourth part of the within certificate, and the land *land* located or which may be located in virtue thereof, and all other privileges and appurtenances thereunto belonging or in any wise appertaining.

July 4th, A.D. 1817.

THOMAS RECTOR.

Attest,
WHORT. RECTOR.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI,
ST. LOUIS, March 14th, 1853.

I certify that the foregoing, marked A., is a copy of the original certificate No. 184, now on file in this office, of Frederick Bates, recorder of land titles in the Territory of Missouri, issued under the provisions of the act of Congress therein mentioned, of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid (in the Missouri territory, who suffered by earthquakes)."

The parts marked B. and C. are copies of assignments written upon the back of said certificate.

D. A. SPAULDING,
Surveyor-General.

Survey of same.

Thomas Rector and Elias Bancroft enter for Henry Peyroux (under Francis Hamlin) or his legal representatives, any quantity of land not exceeding one hundred and sixty acres, by virtue of a certificate No. 184, dated November 30th, 1815, and issued by Frederick Bates, Esquire, recorder of land titles for the Territory of Missouri, begin-

ning at the southeasterly or lower corner on the margin of the Mississippi river, of a tract of land on which William Christy at present resides, and which said tract of land formerly belonged and is confirmed to Louis Labeaume, pursuing from said corner westerly with the lower line or southern boundary of said tract of land, to the point where the easterly boundary or end line of the forty arpent lots, situate in what is by some called the little prairie near the town of St. Louis, intersects the same, thence southerly with said line or lines, so far that an easterly line extended therefrom in such direction to the Mississippi river, and up the same along the edge of the water at low water mark, to the beginning, shall include the quantity as nearly in a square as may be, deducting therefrom and forever disclaiming all lands heretofore actually confirmed, which may be comprehended as inclosed by the said boundaries or calls of this entry.

THOMAS RECTOR.
ELIAS BANCROFT.

Class No. 105.
April 7th, 1817.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI,
ST. LOUIS, March 14, 1853.

I certify that the above is a correct copy from the original notice of location, made in virtue of certificate No. 184, is issued on the 30th November, 1815, by Frederick Bates, recorder of land titles in the Territory of Missouri, pursuant to the act of Congress approved on the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

D. A. SPAULDING.
Surveyor-General.

Bill of Exceptions.

Defendants gave in evidence survey for P. Chouteau by Antoine Soulard in 1803, as follows:

LOUIS LABEAUME.

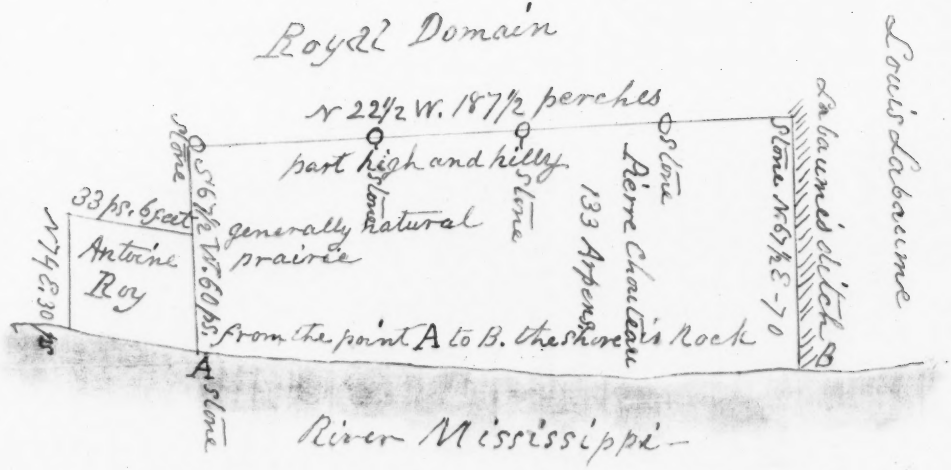
(For plat, see original, page 178.)

Note. The four corners and the bounds (on the lines) are stones rammed in with the dross of iron. They are shown on the plat.

Registered in book B. for the surveys of said post (St. Louis), folio C., No. 6.

I, Don Antonio Soulard, surveyor-particular of Upper Louisiana, do certify that on the 10th of March of the present year (in virtue of the decree hereto annexed of the lieutenant-governor and sub-

No 210 pa 247


Royal Domain
N 22½ W. 187½ perches
part high and hilly
generally natural prairie
Stone
Pierre Chateau
133 Arpens
Stone N 67½ E - 70
Louis Labaume
de la mer à l'est
33 ps. 6 feet
Antoine Roy
N 74 E 30 ps
N 67½ W. 60 ps.
from the point A to B. the shore is Rock
A stone
B
River Mississippi

delegate of the royal file, Don Carlos Dehault Delassus, dated the 16th October, 1799), I went on the land of Mr. Pierre Chouteau, for the purpose of surveying the same, agreeably to his demand for 133 superficial arpents, which survey was executed in the presence of the owner and his adjoining neighbors, with the perch of the city of Paris, of 18 feet in length, in accordance with the custom of surveying lands in the province of Louisiana, and without regard to the variations of the needle, which is 7° and 30′ east, as appears from the above plat. This land is situated at about 12 arpents north of this town of St. Louis, bounded north by the land of Louis Labeaume, south in part by another tract owned by Antoine Roy, and on part by that of Hyacinth Egliz, east by the banks of the Mississippi, and west by the vacant lands of the domain; and in order that the whole may be proven whenever needed, I give the present certicate, with the figurative plat which precedes, on which are shown the dimensions of said land, and the limits both natural and artificial that surround it.

(Signed) ANTONIO SOULARD,
Surveyor-General.

St. Louis of Illinois, 17th of June, 1803.

(See Record Book C., pp. 377, 378 and 379.)

St. Louis, March 31, 1848.

I have correctly translated the foregoing.

ADOLPH RENARD,
Recorder.

Bill of Exceptions.

Defendants gave in evidence the following writings and documents, viz.:

Deed from Esther to Jacque Clamorgan.

Deed from Jacque Clamorgan to P. Chouteau.

Moi soussignee Esther mulatresse sous ma margue ordinaire, presence de temeins declare par ces presentés avoir vendee, cedé, lainé et, abandonne tant, des a present que pour toijours, promet garantir et preserver de toutes hypotheques substitutions en autres empechements quel conques au sieur Jacque Clamorgan negociant en celien ici present, acceptant pour lui sesboins ou aquant cause une terre situee au nord de cette ville entre lagrange de terre et le fleure Mississippi ayant quatre arpents de large sur vingt arpens de profondeur en allant du Mississippi aux cotes, tout ainsi que le tout se comporte pour l'avoir obterme par titre de concession de Mr. Don Zenon Trudeau, lieutenant-governuer en datte du cinqueme jour du mois d' 8bre de l'annee derniere mil Sept. cent quatre vingt treize,

de tout quoi me denanti et desiste en faveur du dit sieur Jacque Clamorgan, renon, cant a tous droits, pretentions, noms, raisons ou actions tout des a present comme pour toujours pour moi comme pour les miens, moyennans le prix ent somme de quatre vingt, piastres qui m'out ette payees.

Por le dit Clamorgan de laquelle somme je lui donne par ces presentes bonne et valuable quittance et decharge et sans anciene reserve, en foi de quoi jai signe a Sr. Louis ce deux de Septembre de melsept cent quatre vingt temoin.

mark
de ⋈ la
nomee.

JOSEPH BRAZEAU,
BENETO VASQUEZ, temain.

Recorded, book A, pages two hundred and four and following, this tenth day of December, in the year of our Lord one thousand eight hundred and five.

M. P. LEDUC,
Recorder.

Jachent tous ceux quiees presentes verrent quei Jacques Clamorgan pour valeur recue, vend cede, quitte, et transporte delaine et abandenne a M. Pierre Chouteau, tous les draits, titres actions et pretentions que jai et precis avoir a la terre mentionnee en la vente des autres parts enregistre livre A, pages deux cent quatre et suivante sans aucun recours pidconque centre moi; en foi de quoi j'ai signe et sulle a St. Louis ce six Novembre mil hait cent dix.

J. CLAMORGAN. [SEAL.]

En presence de P. CHOUTEAU, fils.
P. PREVONCHERE.

Territory of Louisiana, District of St. Louis.

Before me, the subscriber, one of the justices of the peace in and for the territory aforesaid, personally came and appeared J. Clamorgan, who acknowledged the within instrument of writing to be his act and deed, hand and seal, for the purposes therein contained.

Given under my hand this 8th day of November, 1810,

M. P. LEDUC.

Territory of Louisiana, District of St. Louis.

Recorded, book C., page one hundred and eighty-four, this 8th day of November, A. D. 1810.

M. P. LEDUC,
Recorder.

State of Missouri, County of St. Louis, *ss.*

Before me, the undersigned and sealed, one of the justices of the the County Court within and for the County of St. Louis and the State of Missouri aforesaid, personally came and appeared the undersigned, Marie Philip Leduc, to me, the said justice, well known, who, being duly sworn on the Holy Evangelists of Almighty God, deposes and says, that he is well acquainted with the handwriting of Joseph Brazeau and Beneto Vasquez, subscribing witnesses to the within annexed deed from Esther, mulattresse, to Jacque Clamorgan. And that the signatures of said witnesses, to wit, the said Joseph Brazeau and Beneto Vasquez, are the proper signatures of them the said witnesses. He, the said deponent, further says, that he saw, several times, the said witnesses write their own respective names, and that the aforesaid witnesses are now deceased.

M. P. LEDUC.

Sworn and subscribed before me, this 14th day of June, 1821,

WILL. SULLIVAN. [SEAL.]

Recorded this 14th day of June, 1821.

ARCHIBALD GAMBLE,
Recorder.

State of Missouri, County of St. Louis, *ss.*

I, the undersigned, recorder for said county, do hereby certify the foregoing to be a true, full, and complete copy of an instrument of writing, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office, in book K., pages 216 and 217.

Witness my hand and official seal, at St. Louis, the first day of April, A. D. 1848.

S. D. BARLOW,
Recorder.

Translation.

I, the undersigned Esther, a mulatto woman, with my ordinary mark, in presence of witnesses, declare, by these presents, that I have sold, ceded, quitclaimed, and abandoned, now and forever, and promise to warrant and defend, against all mortgages, entails or other incumbrances whatever, to Mr. Jacque Clamorgan, a merchant of this place, now present, accepting for himself, his heirs or assigns, a piece of land situate north of this town, between the Big mound and the Mississippi river, having a width of four arpents, by twenty arpents in depth, from the Mississippi to the hills, as the whole are to be found. Having obtained it as a grant from Mr. Don Zenon Trudeau, lieutenant-governor, on the fifth day of October of last year, seventeen hundred and ninety-three, which I give up and relinquish in favor of said Clamorgan; renouncing all rights, claims,

titles, interest, now and forever, for myself and representatives, in consideration of the price and sum of eighty dollars, which have been paid to me by said Clamorgan; of which sum I give him, by these presents, a good and lawful receipt and discharge, and without any reservation.

In testimony whereof, I have signed, at St. Louis, this second day of September, seventeen hundred and ninety-four.

mark
of ⋈ the
said.

Witness, J. BRAZEAU,
Witness, BENETO VASQUEZ.

Deed from Clamorgan to Chouteau.

Be it known to all who shall see these presents, that I, Jacque Clamorgan, for value received, do sell, cede, quitclaim, and transfer, relinquish and abandon, to Mr. Pierre Chouteau, all the rights, title, interest, and claim which I have, and may have, on the piece of land mentioned in the within deed, recorded in book A., page 204, and following, without any recourse whatever against me. In testimony whereof I have signed and sealed at St. Louis, November 6th, 1810.

J. CLAMORGAN. [SEAL.]

In presence of
P. CHOUTEAU, Jr.,
P. PREVONCHERE.

Deed from Louis Labeaume and wife to William Chambers in 1816.

This indenture, made the twenty-seventh day of the month of April, in the year one thousand eight hundred and sixteen, between Louis Labeaume and Susan Chauvet Dubreuil, his wife, of Richwood township, county of Washington, Missouri territory, and William Chambers of Jefferson county, State of Kentucky, witnesseth, that the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, for and in consideration of the sum of seven thousand and four hundred and sixty dollars, current money of the United States of America, to them in hand paid, the receipt whereof they do hereby acknowledge, have granted, bargained, and sold, aliened, released, and enfeoffed and confirmed, and by these presents do grant, bargain, and sell, alien, release, enfeoff, and confirm, unto said William Chambers, his heirs and assigns, a certain tract or parcel of land, situate, being, and lying in the county of St. Louis, territory aforesaid, and on the waters of the Mississippi, containing three hundred and seventy-four arpents, French measure, and bounded as follows, to wit: Beginning at a bound marked D. on the original plat of survey

made by virtue of the original Spanish concession, north sixty-seven degrees thirty minutes east, to a bound E. on the Mississippi; thence with the meanders thereof to the mouth of Stony creek; thence up with the meanders of said creek to a bound A.; thence from A., south twenty degrees thirty minutes east, thirty-six poles, to B.; thence from B., south sixty-seven degrees thirty minutes west, one hundred and thirty-six poles, to a bound C.; thence from C., south twenty-two degrees thirty minutes east, one hundred and sixty poles, to the place of beginning, the whole according to the plat of the original survey made by Anto. Soulard, the tenth of the month of April, in the year one thousand seven hundred and ninety-nine, reference thereunto being had it will more fully appear, and all the estate, right, title, interest, claims, and fee of them the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, of, in, and to the said William Chambers, his heirs and assigns, to his and their only proper use, benefit, and behoof forever. And the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, do covenant and agree to and with the said William Chambers, his heirs and assigns, that they are seized and possessed of a good, sure, and perfect estate in fee simple, of, in, and unto said tract of land, with all the appurtenances, and that they have full power and lawful authority to sell and convey the same to the said William Chambers, his heirs and assigns. And the said Louis Labeaume and Susan Chauvet, his wife, do further covenant and agree to and with the said William Chambers, his heirs and assigns, that the said tract or parcel of land is free and clear of and from all right and title of dower or incumbrance whatever, and that they will their heirs, executors, and administrators shall warrant and forever defend the said tract or parcel of land, with all the appurtenances, unto the said William Chambers, his heirs and assigns, forever, lawfully claiming or to claim the same. In testimony whereof, the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, have hereunto set their hands and seals on the day and year first written.

L. LABEAUME. [SEAL.]
SUSAN LABEAUME. [SEAL.]

Signed, sealed and delivered
in presence of
AUGUSTE LEWIS,
ALBERT LIEM,
JNO. E. THALOZEN.

Richwood Township, County of Washington, Missouri Territory.

Before me, one of the justices of the peace for and in the township aforesaid, personally appeared Louis Labeaume and Susan Chauvet Dubreuil, his wife, of the said township, who acknowledged to have signed, sealed, and delivered the within instrument of writing, as

their act and deed, for the purposes therein contained; and having examined P. Susan Chauvet Dubreuil apart and out of the presence of Louis Labeaume, her husband, she has declared and said she had signed and sealed the above of her own free will and consent, without any force or compulsion whatever. In witness whereof I have hereto set my hand and seal the twenty-seventh day of the month of April one thousand eight hundred and sixteen.

JOHN HOUINE, [SEAL.]
J. P.

April 27th, 1816, received of William Chambers, in part payment of the land conveyed by the foregoing deed, the sum of two thousand four hundred and eighty-six dollars and 67 cents, it being one-third of the said purchase-money I have mortgaged on the land.

L. LABEAUME.

Missouri Territory, County of St. Louis, *ss.*

Recorded book F., pages nine and ten, this third day of July, 1816.

M. P. LEDUC,
Clerk.

State of Missouri, County of St. Louis, *ss.*

Be it remembered, that on this twelfth day of October, in the year of our Lord one thousand eight hundred and thirty, before me, a justice of the peace, within and for the county of St. Louis, came John G. Thalozan, who is personally known to me to be the person whose name appears subscribed to the foregoing deed as a witness of the execution thereof, and made oath that Louis Labeaume and Susan, his wife, whose names appear subscribed to the said instrument of writing as grantors, are the real persons who executed the same; that the said Louis and Susan, his wife, subscribed, sealed, and delivered the same in his presence, and acknowledged the same to be their act and deed for the purposes therein mentioned, and that he, the said John E. Thalozan, subscribed the said deed as a witness, in the presence and at the request of the said Louis Labeaume and Susan Labeaume.

JOHN E. THALOZAN.

Sworn to and subscribed this 12th day of October, 1830, before
J. V. GARVIUS,
AUGUSTE SINOM.

State of Missouri, County of St. Louis, *ss.*

I, Stephen D. Barlow, ex-officio recorder, clerk of the county court, and in and for the county aforesaid, hereby certify that the

foregoing deed from Louis Labeaume and wife to William Chambers was, on the 17th day of September, 1846, filed for record in my office, and is truly recorded therein in book C., No. 4, page 274, and following.

[SEAL.] Given under my hand and official seal at St. Louis, the day and year aforesaid.

S. D. BARLOW,
Recorder.

State of Missouri, County of St. Louis, *ss.*

Be it remembered, that on this eighteenth day of September, in the year of our Lord one thousand eight hundred and forty-six, in the county of St. Louis aforesaid, before me, Stephen D. Barlow, clerk of the St. Louis County Court, came John E. Thalozan, who is personally known to me to be the same person whose name is subscribed to the within and foregoing deed from Louis Labeaume and Luzon Labeaume to William Chambers, as a witness thereto, and made oath that Louis Labeaume and Luzon Labeaume, whose names are subscribed to the said deed as parties thereto, are the persons who executed the same; that the said Louis Labeaume and Luzon Labeaume signed, sealed, executed, and delivered the same in his presence, and severally acknowledged the same to be their act and deed for the purposes thereunto mentioned; and that said witness, John E. Thalozan, then subscribed his name to said deed as a witness thereof, in the presence and at the request of said parties.

[SEAL.] In testimony whereof, I hereunto set my hand and affix the seal of said court, at office in said county, the 18th September, 1846.

STEPHEN D. BARLOW,
Clerk County Court, St. Louis County, Mo.

Filed and recorded, September 18, 1846.

S. D. BARLOW,
Recorder.

State of Missouri, County of St. Louis, *ss.*

I, Stephen D. Barlow, clerk of the County Court and ex-officio recorder in and for the county aforesaid, hereby certify that the foregoing is a true and correct copy of an instrument in writing that was filed for record in my office, September 18, 1846, as fully as the same remains of record in Book C., No. 4, page 281, and following.

[SEAL.] Given under my hand and official seal, at St. Louis, this 26th day of June, A.D. 1847.

S. D. BARLOW,
Recorder.

Deed from Chambers to Christy and Wright.

Deed from said Chambers to William Christy and Thomas Wright, dated May 4, 1816.

This indenture, made this fourth day of May, one thousand eight hundred and sixteen, by and between William Chambers, of Jefferson county, in Kentucky, of the one part, and William Christy and Thomas Wright, of the town of St. Louis, in the Missouri territory, of the other part, witnesseth, that the said William Chambers, for and in consideration of the sum of four thousand nine hundred and seventy-three dollars and thirty-three cents to him in hand paid, the receipt whereof he doth hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto them the said William Christy and Thomas Wright, their and assigns, two equal undivided third parts of a certain tract or parcel of land, containing three hundred and seventy-four arpents, French measure, which land is situated, lying and being in the county of St. Louis, in the Missouri territory, and bounded as follows, to wit: beginning at the letter marked D, on the original plat of survey, made by virtue of the original Spanish concession, running from thence north sixty-seven degrees thirty minutes east to the letter E, on the bank of the Mississippi; thence with the meanders thereof to the letter A on the said plat; thence south twenty degrees thirty minutes east, thirty-six poles to B; thence south twenty degrees thirty minutes west, one hundred and thirty-six poles to the letter C; thence south twenty-two degrees thirty minutes east, one hundred and sixty poles to the place of beginning, containing, according to the aforesaid original plat of survey, made by Ant. Soulard, the tenth day of April, in the year one thousand seven hundred and ninety-nine, reference thereunto being had it will more fully appear, it being the same tract or parcel of land purchased by the said William Chambers of Mr. Louis Labeaume and Susan Chauvet Dubreuil his wife, for and on the joint and equal account of the said Christy, Wright, and himself, on the twenty-seventh day of April, eighteen hundred and sixteen, to have and to hold the said tract or parcel of land, with all the appurtenances, unto the said William Christy and Thomas Wright, their heirs and assigns, to them and their only proper use and behoof for ever. And the said William Chambers doth covenant and agree to and with the said Christy and Wright, their heirs and assigns, that he the said William Chambers will warrant and defend the said tract of land unto the said Christy and Wright, their heirs and assigns, against all and every person and persons lawfully claiming or to claim the same by thought or under him the said Chambers, but not against the claim or claims of any other person or persons whatsoever. And the said William Chambers hereby farther covenants and agrees to and with the said Wm.

Christy and Thomas Wright that they shall have full power and authority, in common with himself, to proceed against the said Louis Labeaume and his legal representatives at law or in equity, under the covenant of general warrantee contained in a deed of conveyance from the said Labeaume and his wife to the said Chambers for the same tract of land, which deed was executed on the twenty-seventh day of April, one thousand eight hundred and sixteen, for any damages they may sustain by the loss of any part of the land, and they are hereby fully vested with the said authority. In testimony whereof, the said William Chambers has hereto set his hand and seal, the day and year first above written.

Test. WILLIAM CHAMBERS. [SEAL.]

M. BLOMFIELD HALL,
T. NEAD.

Township of St. Louis, County of St. Louis, Territory of Missouri, *ss.*

On the fifth day of May, eighteen hundred and sixteen, personally appeared before me the subscriber, a justice of the peace for St. Louis township, William Chambers, and acknowledged the foregoing instrument of writing to be his act and deed, and the premises therein mentioned to be the rights and estate of the within-named William Christy and Thomas Wright, their heirs and assigns.

Given under my hand and seal the day and year aforesaid.

JERAH. CONNOR, [SEAL.]
J. P.

Recorded this 3d day of July, 1816.

M. P. LEDUC,
Clerk.

State of Missouri, County of St. Louis, *ss.*

I, the undersigned, recorder in and for the county of St. Louis, do hereby certify the foregoing to be a full and complete copy of a deed from William Chambers to Christy and Wright, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office, in book F, page 10.

[SEAL.] Witness my hand and official seal, this 21st day of March, 1853.

S. D. BARLOW,
Recorder.

Agreement between P. Chouteau and G. F. Strother.

Agreement between P. Chouteau and Geo. F. Strother, dated in 1822.

Articles of agreement had, made, concluded and agreed upon, this

20th day of December, in the year 1822, between Pierre Chouteau of the one part, and Geo. F. Strother of the other part.

1st. The said Pierre Chouteau, in consideration of the sum of five hundred and sixty dollars to him in hand by the said Geo. F. Strother, at or before the sealing and delivering of these presents, and the further sum of three thousand nine hundred and fifty dollars, to be paid as hereinafter is mentioned, doth hereby for himself, his heirs, executors, and administrators, and every of them, covenant, promise and agree, to and with the said Geo. F. Strother, his heirs, executors and administrators, and all and every of them, by these presents, that he the said Pierre Chouteau, his heirs and assigns, and all and every other person and persons whomsoever, claiming or to claim any right, title or interest under him, or any person or persons whatsoever, of, in or to, two several tracts or parcels of land hereinafter mentioned, shall and will, at the proper costs of him the said Pierre Chouteau, his heirs and assigns, on or before the first day of March next, by such conveyances, assurances, ways and means, in the law, as he the said George F. Strother, his heirs and assigns, shall reasonably desire and require, well and sufficiently grant, sell, release, convey and assure, to the said Geo. F. Strother, his heirs and assigns, a tract (torn off) four arpents in front, and forty arpents deep, lying upon the side (torn off) the road, opposite Duchoguet's farm, and embracing the big spring, containing one hundred and sixty arpents, and a tract or parcel of land lying upon the Mississippi, extending upon the bank of the river from the tract of land sold by the said Pierre Chouteau to William C. Carr to a tract of land formerly sold by Labeaume to William Christy, according to conveyance from Brazeau to Labeaume, and running with each of these lines back as to embrace the Big mound, the said tract of land to contain at least thirty arpents, with covenants, to be therein contained, that the said two tracts of land, at the time of conveyance, is free from all incumbrances and demands whatsoever, and all other and reasonable covenants. In consideration whereof, the said Geo. F. Strother doth hereby covenant, promise, and agree to and with the said Pierre Chouteau, his heirs and assigns, that, at the time of executing the conveyance, he will convey to him a house and lot in the town of St. Louis, purchased from Hughes & Morins' admt., at the price of six hundred and fifty dollars, two thousand two hundred dollars in promissory notes, or bonds due from persons residing in the State of Missouri, to be assigned by the said Strother; three hundred and fifty dollars in cash when *when* the deeds are executed, and seven hundred and forty dollars sixteen months after the execution of the said deed.

In witness whereof, the parties have hereunto subscribed their hand and affixed their seals the day and year above recited.

PIERRE CHOUTEAU, [Place for seal torn off.]
GEO. F. STROHER. [Torn off.]

Witness, H. COZENS.

I hereby certify that on the 11th day of January, 1823, Geo. F. Strother conveyed to Pierre Chouteau the half square within mentioned, by him purchased from Hughes and Morris, administrators.

H. COZENS.

January 14th. By order of Sylvester Labadie upon Chouteau, forty-five dollars, by fifty dollars paid Hempstead & Giddings for Mr. Chouteau.

H. COZENS.

County of St. Louis, *ss.*

Be it remembered, that on the day of the date hereof, personally appeared before the undersigned, clerk of the County Court of St. Louis County, John R. Walker and Henry Walton, two credible witnesses, each of whom was by me duly sworn, and upon their respective oaths they respectively declared that they personally knew, at and before, and since the date of the foregoing instrument of writing, Pierre Chouteau and Geo. F. Strother, the persons whose names are subscribed to said instrument as parties thereto, and well knew and know the signatures of each of them from having seen each of them often write, and that they respectively do believe the names of said persons subscribed thereto as parties were so subscribed by the said Chouteau and Strother respectively; and the said Walker and Walton further on oath declared that they personally knew Horatio Cozens, whose name is subscribed to said instrument as witness thereto, and well know and knew his signature from having often seen him write, and that they each believe that the name of H. Cozens, subscribed thereto as a witness, was thereto subscribed by the said Horatio Cozens; and said Walker and Walton further declared on oath that both said Horatio Cozens and Geo. F. Strother are dead. Wherefore, I, Stephen D. Barlow, clerk, as aforesaid, being satisfied that all the subscribing witnesses to said instrument are dead, have taken proof and certified as herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in St. Louis, Missouri, the 10th day of February, A. D. 1846.

[SEAL.]

S. D. BARLOW.

Filed for record, and recorded, February 10th, 1846.

Note by the Recorder.—The blank place included in the brackets on the 12th and 13th lines, and opposite the signatures of parties, represent portio.. of original instrument torn or broken out before recorded.

S. D. BARLOW,
Recorder.

State of Missouri, County of St. Louis, *ss.*

I, the undersigned, recorder in and for the county aforesaid, do hereby certify, that the foregoing is a full and complete copy of an agreement between Pierre Chouteau and Geo. F. Strother, and also of the certificate of acknowledgment and of the date of recording thereof, as fully as the same remains of record in my office, in book H., No. 3, page 358, and 356 and 357.

Witness my hand and official seal, at St. Louis, 22d
[SEAL.] of March, 1853.

S. D. BARLOW,
Recorder.

The grant and order of survey to Esther, and all the proceedings before the board of commissioners.

Jacques Clamorgan claims the following tracts of land, viz.:

1. As assignee of Thomas Tyler, &c.

10. A tract containing 80 arpents, between the Mississippi and the mound called La Grange, purchased of Esther, a free mulatto woman, to whom the same was granted for pasture, hay, &c., in October, 1793.

A Monsieur Don Zenon Trudeau, &c., supplie humblement la nommeé Esther, mulatier libre demeurant dans cette ville de Saint Louis et a l'honneur de vous exposer qu'ills deviserait obtenis dans la partie du nord de cette ville une terre situee sur les bords du Mississippi bornee sur trois cotes pas la domaine de sa Majesté et sur l'autre par les bords du Mississippi, dont la partie du nord de la presente concession demandee soit situee entre la monticule nommee la grange de terre et les ecors du surdit Mississippi ayant sur les deux bouts quatre arpents de terre de part qui crout a peu près de l'ent et on est a Cuert sud on est sur vingt autre arpens d'etendue on profundens qui iront a peu pres du nord, nord ou est au sud sud est, afin que la suppliante puisse en souir en propriete, pour ille ses hires ou arjans causé (à) l'effet d'y recoles des fo in et faire paturos ses animaux on til autre emploi convenable a ses interets et la suppliante ne cessera de rendre graces a vos bontes. St. Louis ce 2 de 9bre, 1793. Signé une croix pour la marque, d'Esther.

(For plat, see original, page 194.)

Nous Lieutenant de Gouverneur, apres avoir examini que la terre demandié appartient au domaine de sa Majeste et qu'elle en parte prepidice a personne, I certifie avoir mis en possession la nommee Esther mulatraoe libre de la portion de terre designees pas su requite ayant quatre arpents de front en allant a peu pris de l'est nord est a l'ouest sud ouest, sur vingts arpents de hauteur en allant a peu pres des nord nord ouest au sud sud est, situee dans la partie du nord de cette ville outre la monticule nommee la Grange de Terre et les bords du Mississippi en descendant le dit fleure dont trois cotes de la ditte terre

demandre sont bouses par le domaine de la Majeste et l'autre cote qui est dans la partie de l'est nord est, est bouses par les sene du Mississippi ainsi qu'il est figure pas le plan. Pous en constat es nous avous donni le present en la ville de St. Louis ce 3 Fvr., 1793.

Signé ZENON TRUDEAU.

Zenon Trudeau, Lieutenant Gouverneur de la partie occidentale des Illinois. En consequence de la demande a nous faite par la nommee Esthr, mulatrese, libre demeurant en cette ville de St. Louis, par sa requete en date du deux du present mois et apres l'avois mise en possession nous memes, suivant l'acte que nous en avous dresse le jour suivant nous avous curadi et conecdens a la dite nommee Esther a litre de propriete poni elle ses lions ou ayant cause ou tous autres qui permaient representes ses droits la par teinde terre ci devant designee ayant quatre arpents de face pour ses deux entrarientes, qui serent a peu pres de l'est nord est en allant a ouest sud ouest sur vingt autres arpents, de hauteur en allant a peu pres du nord nord ouest au sud sud est, situeo ou nord du cette ville alors la partie du nord de la presente concession sud situeo entro la monticulo nom moi La Grange de Terre, et les bords du Mississippi, en descendant le dit fleuve proqu'n a la concurrence et etendue des sus dits vingt arpents de por fondeur. The nord nord ouest, the sud sud est et le ouest sud ouest qui sont a peu pres la direction des lignes surait bornes par les domaines de sa majeste et le cote de l'est nord est qui est le cote de l'est nord est qui est le cote et a fleuve sera borne par le Bur de ses econs a fin que la dite nommee Esther puisse y recoleur le fonsage dont elle a beiour y faire patriennes animaux et en faire tel autre usage convenable à ses interets. Demenant alors sujette aux loix charges et imposition qu'il fleura a sa Majeste d'y imposes a l'avenir. Donne la ville de Saint Louis des Illinois ce cinquieme jour du mois d'Octobre de l'annee mil sept cent quatro vingt trieze, approve trente deux lignes en marage ci contre par renvoi d'une croix au dieut de mise en possession.

ZENON TRUDEAU.

A la reclamatin de Mr. Jacque Clamorgan, je certifie que la presente copie est en te at conforme a l'original poste soule No. 10 au Liver 5 intitule "comme suit." Livre pour servier a l'enregistriment pour les concessions.

Commence le 21 du mois de Septembre de l'annee 1793, par Mr. Zenon Trudeau.

Lieutenant de Gouverneur aux Illinois contenant. Ils feuilles sequel lion depose a l'archive de l'arpentage de ce territoire a ma charge. En foi de quoi j'ai delivre le present a l'interesse pour lui

servir et valoir partout ou besoin sera et comme de raison a contrates sur ses proclamations.

St. Louis, trente Novembre, mil huit cent cinq.

ANTOINE SOULARD,
Arpentier General.

Tn Louisiane.

Moi Leur signe Esther mulatresse sous ma marque ordinaire presence de temorins, declare par ces presentes avoir vendu, cedi laisee et abandonne, tant dis a present que peur toujours prometo guarantir et preserves de toutes hypotheque substitutions et autre empechement, qule ou ques au Sieur Jacque Clamorgan negocient en ce lieu, ici present, acceptant pour lui, les siens au ayant causes une livre situee au nord de cetto ville entre La Grange de Terre et le fleuve Mississippi, ayant quatre arpents de large seis vingt arpents de profondeur, en allant du Mississippi aux cotes, tout ainsi que le tout se comporte pour l'avoir abaume par titre de concession de Mr. Don Zenon Trudeau, Lieutenant Gouverneur, en date des cinquieme jour des mois d'October de l'annee desinere, mil sept cent quatre vingt treize, de tout quois je une den antis et discite en faveur du Mr. J. Clamorgan, renon cant a tous droits pretensions, noms raisons ou actions, tout dis a present qui pour te ajours pour moi comme pour les miens may sunant le pix et somme de quatre vingt piastri qu' m'ont ete payees par le dit Clamorgan, de la quelle somme je lui donne par ces presentes bonne et valable quittance et dicharge et sous renoune reserve ve En foi de quoi fai signe a St. Louis ce 2 de Septembre de mil sept cent quatre vingt quatorze.

marque
de ⋈ la
nommee.

Temoins Jos. Brazeau. Benito Vasquez, temoin. Recorded Book A., pages two hundred and four and following, this tenth of December, in the year of our Lord, one thousand eight hundred and five.

M. P. LEDUC,
Recorder.

See Recorder's Book C., pages 134, 157 and 160.

August 22, 1806.

The Board met agreeably to adjournment. Present, the Hon. John B. C. Lucas, Clement B. Penrose, and James L. Donaldson, Esq.

Jacque Clamorgan, asst. of Esther, a mulatress woman, claiming four by 20 arpens of land, situate on the Prairie of St. Louis, produces a duly registered warrant of survey from Zenon Trudeau,

dated the 2d October, 1793, granted for the purpose of cutting hay, and a deed of transfer of the same, dated the 2d September, 1794.

Joseph Brazeau being duly sworn, says that to his knowledge, claimant did make hay on said land, but cannot say positively when.

The Board reject this claim.

Adjourned to to-morrow 9 o'clock, A.M.

See book No. 1, of minutes of old board, pages 483, 485 and 486.

Friday, February 17, 1809.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners. On application of Pierre Chouteau for a decision on his claim for 93 arpents and one perch of land, situate above the town of Saint Louis, stating that said land has been taken in execution as the property of Jacques Clamorgan, said claim interfering with Jacques Clamorgan as assignee of Esther, a mulatress, recorded in book C, page 159, of the recorder's office, claim of Pierre Chouteau, acted on in book 3, page 443, that of Jacque Clamorgan in book No. 1, page 485; the claim of Antoine Roy, also interfering, see book No. 3, page 374. The Board agree to take up the same. On a question being made to take up the claim of Jacque Clamorgan, assignee of Esther, mulatress, Clement B. Penrose and Frederick Bates, commissioners, voted for it, having reference to the concession in the claim of Antoine Roy for 600 square feet. John B. C. Lucas, commissioner, voted against it, because the said claim is not laid over for decision, and the time given by the Board for the taking of testimony in claims is not expired.

The Board are unanimously of opinion that the claim of Jacque Clamorgan, assignee of Esther, ought not to be confirmed.

Board adjourned.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes of old board, No. 3, pages 475 and 476.

Wednesday, March 6th, 1833.

The board met pursuant to adjournment. Present, F. R. Conway, A. G. Harrison, commissioners.

Dec. 70, page 310.

Esther, free mulatto woman, claiming 80 arpents of land. See Livre Terrien, No. 5, pages 10 and 11, book C, 159 and 160.

Rene Dodier, being duly sworn, says, that he knew Esther, a free mulatto woman, who lived with Clamorgan; that she had a great deal of land near the mound, commonly called La Grange de Terre; that she lived with Clamorgan as if she had been his wife; that Clamorgan had several children by her; that Esther had cattle which were

sent to pasture along with Clamorgan's cattle on said piece of land, and that she was generally known as being the lawful owner of said land; that said land was confined in the common fields of St. Louis, the fence of said field running on this side of where now lives Mr. Mullanphy. Witness further says, that he thinks Esther's land extended to the bank of the Mississippi, as it did not run west of the road going to Bellefontaine. See book No. 6, pages 111 and 112.

Friday, April 26, 1833.

The board met pursuant to adjournment. Present, A. G. Harrison, F. R. Conway, commissioners.

No. 70, page 310.

In the case of Esther, claiming 80 arpents of land, see page 111 of this book.

Jean Baptiste Reviere dit Baccanue, duly sworn, says he knew Esther, a free mulatto woman, who lived with Clamorgan; that to his knowledge said Esther had, to the north of St. Louis, a small piece of land, which had been given to her by the public at the end of their common fields, and that Esther made use of said piece of land as a pasture for her calves and cows; that the said land was situated between the mound commonly called La Grange de Terre and the next mound south of the Grange de Terre, and running from the descent of the hill, between the abovesaid mounds, to the Mississippi; that he does not know exactly how long she possessed the said land. He further says that when he said that the said land had been given to Esther by the public, he meant the government.

Francis Duchanquette, duly sworn, says, he knows that Esther owned a piece of land situate at the foot of the Grange de Terre, and running thence to the Mississippi, but does not know what quantity of land; that said Esther was the reputed owner of said land for more than ten years.

Elizabeth Hortez, duly sworn, says, that she heard her husband and others say that Esther had a piece of land situate about the Grange de Terre, running towards the Mississippi; that the cows which were at Clamorgan's were always called Esther's cows.

See book No. 6, pages 160 and 161.

Friday, November 8, 1833.

The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

70. Esther, free mulatto woman, claiming 80 arpents of land. See pages 111 and 160.

The board are unanimously of opinion that this claim ought to be confirmed to the said Esther, or her legal representatives, according to the concession.

The board adjourned until to-morrow at 9 o'clock.

L. F. LINN,
A. G. HARRISON,
F. R. CONWAY.

Book No. 6, pages 307, 310, 312.

RECORDER'S OFFICE, ST. LOUIS, 27th March, 1848.

I certify the foregoing to be truly transcribed from the books and records of this office, at the pages therein referred to.

ADOLPH RENARD,
U. S. Recorder of Land Titles, St. Louis, Mo.

Translation of the parts of the foregoing which are in the French language.

For petition of Esther, translation, see page 34 and 34 of this transcript, and page of copy.

(Clerk.)

(For diagram, see original, page 200.)

For declaration and certificate of Lieutenant-Governor Trudeau, and concession to Esther (translations), see page 34, 34 of transcript and of copy.

(Clerk.)

At the request of Mr. Jacque Clamorgan, I do certify that the present copy is, in its whole, conformable to the original, registered under the No. 10 of book No. 5, entitled as follows: "Book for the record of concessions," begun the 21st of the month of September, in the year 1793, by Mr. Zenon Trudeau, lieutenant-governor of Illinois, containing twenty-four leaves, which book is deposited in the archives of the surveys in this territory, under my charge. In testimony whereof, I have delivered the presents to the interested party, to serve him to prove his right to this claim whenever needed. St. Louis, thirteenth November, one thousand eight hundred and five.

ANTOINE SOULARD,
Surveyor-General Territory Louisiana.

For deed of Esther to Clamorgan (translation), see page 179 of this transcript.

(Clerk.)

ST. LOUIS, March 31, 1847.

I have correctly translated the foregoing.

ADOLPH RENARD,
Recorder.

A.

Fac-simile of the Petition and Grant to Esther from Livre Terrien.

TO DON ZENON TRUDEAU:

Esther, a free mulatto woman, residing in this town of St. Louis, humbly supplicates, and has the honor of representing to you, that she would wish to obtain, in the part north of this town, a piece of land situated on the borders of the Mississippi, bounded on three

sides by his majesty's domain, and on the other side by the banks of the Mississippi. The northern part of the concession now petitioned for, to be situated between the mound commonly called La Grange de Terre and the banks of the Mississippi, having at its two ends four arpents in front, running about from the east-northeast to the west-southwest, by twenty arpents in length or depth, running about from the north-northwest to the south-southeast, in order that the petitioner may enjoy the same in full property for her, her heirs or assigns, to make hay, pasture her cattle, or for any other purpose suitable to her interest. And the petitioner shall never cease to render thanks to your goodness.

St. Louis, October, 1793.

One cross Esther's × mark.

B.

(For diagram, see original, page 201.)

We, lieutenant-governor, after having ascertained that the land petitioned for belongs to his majesty's domain, and that it is not prejudicial to any person, I certify to have put in possession the free mulatto woman named Esther,× residing in this town of St. Louis, according to her petition, dated 2d inst. And after having put her in possession ourselves, as appears by the document which we have drawn the next day, we have granted, and do grant, to the said Esther, in fee simple, for her, her heirs or assigns, or any other who may represent her rights, the piece of land here above designated, having four arpents in width at its two extremities, running from about east-northeast to west-southwest, by 20 arpents in length, running from about north-northwest to south-southeast, situate to the north of this town; and the north end of the present concession shall be situated between the mound called La Grange de Terre and the Mississippi, and thence descending the said river until the complement of the above-mentioned 20 arpents in depth. The north, north-northwest, south-southeast, and west-southwest, which are about the courses of the lines, shall be bounded by his majesty's domain, and the north-northeast side, which is the side facing the Mississippi, shall be bounded by the edge of its banks, in order that the said Esther may gather thereon the forage she requires, pasture her cattle, and for such other purposes as may suit her interests, remaining subject to the laws, taxes, and impositions which it may please his majesty hereafter to impose. Given in the town of St. Louis of Illinois, this 5th day of October, 1793. Approved, thirty-two lines written at the margin, here behind, and marked by a cross on the decree of delivery of possession.

ZENON TRUDEAU.

× Of the piece of land described in her petition, having four ar-

pents in front, running from about east-northeast to west-southwest, by twenty arpents in depth, running from about north-northwest to south-southeast, situated in the northern part of this town, between the mound called La Grange de Terre and the banks of the Mississippi, descending the said river. Three sides of the land petitioned for are bounded by his majesty's domain, and the other side, which is to the east-northeast, is bounded by the banks of the Mississippi, as appears by the plat. In testimony whereof we have given the present in the town of St. Louis, this day, 3d October, 1793.

ZENON TRUDEAU.

DON ZENON TRUDEAU,

Lieutenant-Governor of the western part of Illinois.

In consequence of the demand made to us, made by the free mulatto woman named Esther, residing, &c.

C.

RECORDER'S OFFICE, ST. LOUIS, 2d May, 1849.

I do certify that the attached papers marked A, B, C, and signed by me on the left margin are, as far I am able to take it, a true fac-simile of the concession of 80 arpents of land to Esther, a free mulattress, as the same is recorded at folios 10 and 11 of Livre Terrien No. 5, in this office. The spaces between the red lines show the sizes of the pages of the record. I have tried to write the marginal note on B, and the words from "aprouve" to "Trudeau" in C, with blacker ink than the body of the record, in order to conform to the original, in which the said marginal note on B, and the said words in C, from "aprouve" to "Trudeau," appear to have been written with blacker ink, and are more distinct than the body of the said record. The marginal note on B, is the only interlineation in the margin of the six Livre Terriens in this office.

ADOLPHE RENARD,

U. S. Recorder of Land Titles in Missouri.

Grant Confirm. of Antoine Roy.

Grant and confirmation, and all the proceedings in respect thereto, before the board of commissioners, in favor of Antoine Roy.

Claim.

To Frederick Bates, Esq., Recorder of Land Titles in and for the District of Louisiana.

Sir,—Take notice that I claim 162 arpents and 48 perches, &c., also 11 arpents, 58 perches of land, situated on the Mississippi, district of St. Louis, by virtue of a copy of a concession from Zenon Trudeau, dated August 4, 1797, certified by said Zenon Trudeau,

July 15, 1799. Plat and certificate of survey for the same. Surveyed March 10, and certified by Antoine Soulard, June 17, 1803.

ANTOINE ROY.

St. Louis, May 26, 1808.

(Copie.)

Monsieur Lieutenant Gouverneur,—Antoine Roy, habitant de cette ville de Sant-Louis, avec le plus profond respect vous expose qu'apres que vous ayez ou la bonte de luis accordes eur emplacement pour latir eur moulin a vent, et Messieurs les ingenieurs ayant trouve qu'il nimerit bien lui accordes six cents pieds de line carles faisant face par l'afin de pouvoir le construire immediatement. Grace qu'il attend de votre équité.

St. Louis le 5 Juillet, 1797.

Le terrain demandi de bien verent a ce qu'il fasait situee pres des fortifications de cette ville Monsieur le Commandant militaire de la Louisiana, voudra bien ordonnes a Messieurs les ingenieurs de la vintes ou dicides pas luis-meme, e'il peut etre concedi sans minse aux defenses des dites fortifications asant quil puisse etro fait diort a la demande.

(Signed) ZENON TRUDEAU.

St. Louis des Illinois, 5d Juillet, 1797.

Messieur les ingenieurs m'en formerent sur les antecedents contenes.

(Signed) HOWARD.

En consequence de l'ordre ci dessus en date du 5 Juillet, 1797, nous ingenieurs du Roy sous signes employ is aux travaux des fortifications de la Haute Louisiane nous semnes transport aur le terrain qui fait l'objet de la requete a 'autre part a fin d'esanaire si le moulin que le Sieur Roy se propose a 'y ebre peut niuse a la place sur su position, quarque nouis ayons reconnu que le terrain enonce dans la requete pour etre a trois cent toises de la demi-lune n'en soit exactement qu 'a 246, et que cette distance soit beau coup au dessous de cette limiteé par les ordonnances nous n'en croyons pas moins que le moalir dont il et question dans la requête peut etre elevê sur le dit terrain sans inconvenents pour la place, le terrain environnant offant a la enemi et du meme côte positions plus rapprocheis de la ville et dont il peut nuire avec plus davantage a la defense puisque il ne choisira jamais pour y place de l'artillerie une tourqui n'aura que dix pieds de diameter et une e'paisseur proportionneé a son objet et qué pourrait etre promptement dit route por l'artillerie de la place, tandis que les hauteurs qui se trouvent entre et le fort lui presenteront des batteries plus pres et qui dans quelques heures seront nises en état de recervoir de l'artillerie.

(Signed) DEFINIELS,
L. VANDEUER BERNDEU.

St. Lquis des Illinois, le 6 Juillet, 1797.

ST. LOUIS DES ILLINOIS, le 7 Juillet, 1797.

Je me comforme a la demande ci-dessus sous les conditions exprimeé's par Messieurs les ingéniéurs, devant ce document original ce deposer dans la secretairerie de Monsieur le lieutenant-governeur, qui en donnera copié certifiee a l'interesse.

(Signe) CHARLES HOWARD.

SAINT LOUIS OF ILLINOIS, le 7 Juillet, 1797.

Autant que la terrain demande par Mr. Antoine Roy soit vacant et du domaine du Roie. Monsieur Soulard en ca qualite d'arpenteur de cette jurisdiction, en donnera possession au dit suppliant, et en dressera an procesverbal ci-dessus qui servira a lui deliver la concession qu'il demande et pour le tout etre achemire 'au gouverneur.

(Signe) ZENON TRUDEAU.

ST. LOUIS DES ILLINOIS, le 12 Juillet, 1797.

J'ai l'honneur de vendre compte a Monsieur le lieutenant-gouverneur qu'en vertu de son decret ci dessous, je me suis transporte sur la terre du sieur Antoine Roy pour l'arpenter, et comme cela est de mon devoir, j'ai enterpelle le sieur Jacques Clamorgan son voisin limitrophe lequel m'a prevenu que la terrain sur lequel j'apercus, lui avait ete concede depuis plusieurs annees, et qu'il me priait de suspendre mes fonctions, jusque a'ce qu'il vous ait plie d'en ordonner autrement; que cependant vu que le sieur Roy avait l'entention de datir un moulin il lui abandonnait voluntiers pour favoriertes vues un arpent de face de su terre sur la profondeur qui pourrait lui conuair.

(Signe) ANTOINE SOULARD.

4 August, 1797.

In que la Sieur Clemorgan n'a fait aucuns travaux sur la terrain auquel il pretend et que le *detail* (delai) accorde pour les commencer s'est expire sans meme avoir supporte aucune charge, le Sieur Antoine Roy, vestera avec la preference du mene terrain dan l'entendue qu'il demende.

(Signe) ZENON TRUDEAU.

Pour copie conforme a l'original reste depose en l'archive de ce commandant.

ZENON TRAUDEAU.

ST. LOUIS, le 15 Juillet, 1797.

(For diagram, see original, page 275.)

ALTA LOUISIANA, DISTRITO DE SAN LUIS DE ILLINOIS.

Nota. Las quartos terminos de piedra cimentados con esceria de fragua y indicados en il plano figurativo.

Aseltado al lib B, de los Espes de para diche pt folio 7, N. 7.

Don Antoine Soulard, Agrimensor particular de la Alta Luisiana, certifico que el diez de margo de este presente ano (en virtud del decreto que acompana del Sor Tente de Gobernador de esta Luisiana alta Don Zenon Trudeau, en fecha de Sieta de Julio de mil sete cientos noventa y nueve) me he transferide a la tierra de Don Antonio Roy para pacticar el arpes, arreglado a zu sedi mienti de ouse arpanes y cinquenta ocho perchas planos, cayas medidas, se lun tomado en presencia del proprietario y de los recenos linderos con la percha de Paris de diez y ocho pies de largo segun constumbre adoptada en esta provincia de la Louisiana, y sin tocar a loque puede dor di si la rariacion de la aguja que ez de 7 yds 30 ns. E conro consta del plano figuratio que anticede, auya tierra se halla situado como a ocho o nueva arpanes de distancia de N, de esta vilia de San Luis, lindando al N, con tierra de Don Pedro Chouteau, als con atro de Don Jacinto Egliz al E con lu orilla del Rio Missisipi y a O. con tierra citado de Don Jacinto Egliz, y paraque conste donde combenjce le doy el presente con el plano figurativo que precede en el qual se nidican las dimensiones y limites naturales y artificiales de dicha tierra St. Luis de Illinois a diez y sicte de Junio de mil ocho ciento-y tres.

ANTONIO SOULARD,
Agr. Pen.

See Record, book D., ps. 147, 148 and 149.

Monday, November 28th, 1808.

Board met. Present, the Hon. John B. Lucas, Clement B. Penrose, and Frederick Bates.

Antoine Roy, claiming 600 feet square of land situate near the town of St. Louis, on the Mississippi river, produces to the board a certified copy of a concession from Zenon Trudeau, lieutenant-governor, dated 4th August, 1797. Concession given for the purpose of building a windmill; certified by said Trudeau 15th July, 1799; a plat of survey of eleven arpents fifty-eight perches, dated 10th March, 1803, and certified 17th June, 1803. Louis Brazeau, sworn, says, that about ten years ago claimant built a windmill on the tract claimed; that the said mill is still on the place, and was in operation about two years ago; that claimant has done work constantly on said land ever since.

Laid over for decision.

Board adjourned.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES,
Commissioners.

See minute book No. 3, pages 373, 374, 375, and 376.

Friday, February 17th, 1809.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Certificate No. 181. Antoine Roy, a claim for 600 feet square of land, book No. 3, page 374. Confirmed unanimously to Antoine Roy, eleven arpents and fifty-eight perches, as described in a plat of survey, certified the 17th of June, 1803, and to be found on record in book D., page 149, of the recorder's office.

Board adjourned.

JOHN B. C. LUCAS,
FREDERICK BATES,
CLEMENT B. PENROSE.

See book of minutes No. 3, pages 475 and 476.

Commissioner's Certificate No. 181.

LOUISIANA, February 17th, 1809.

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to land in the Territory of Louisiana, have decided that Antoine Roy, original claimant, is entitled to a patent under the provisions of the fourth section of the act of Congress of the United States, entitled "An act respecting the claims to land in the Territories of Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for eleven arpents and fifty-eight perches of land, situate in the district of St. Louis, on the river Mississippi, as described in a plat of survey, certified the 17th of June, one thousand eight hundred and three, and to be found on record in book D., pages four hundred and forty-nine, of the recorder's office, by virtue of a concession or order of survey from Zenon Trudeau, lieutenant-governor.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See original certificate on file.

RECORDER'S OFFICE, ST. LOUIS, 29th March, 1848.

I certify the foregoing to be truly transcribed from the books and records, at the pages therein mentioned (and the files of this office).

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Translation of those parts of the foregoing which are in the French and Spanish languages.

To the Lieutenant-Governor.

Sir: Antoine Roy, inhabitant of this town of St. Louis, with the most profound respect, shows that since you have had the goodness to grant to him a place for building a windmill, and Messieurs the engineers having found that it would injure the fortifications of this town, prays you, Monsieur, that you will grant to him six hundred

feet square of land, fronting eastwardly upon the Mississippi, and at a distance of three hundred fathoms from the Half Moon, that he may be able to build the same immediately, a favor which he hopes from your justice.

ANTOINE ROY.

St. Louis, Illinois, July 4, 1797.

St. Louis, the 5th July, 1797.

The lot demanded appearing to be among those situated near the fortifications of this town, Monsieur the military commandant of Upper Louisiana, is willing that Messieurs the engineers shall visit the same, that he himself can ascertain if it can be conceded without injury to the defence of the said fortifications, before the demand therefor may be acted upon.

(Signed) ZENON TRUDEAU.

St. Louis of Illinois, 5th of July, 1797.

The engineers will report to me upon the foregoing.

(Signed) HOWARD.

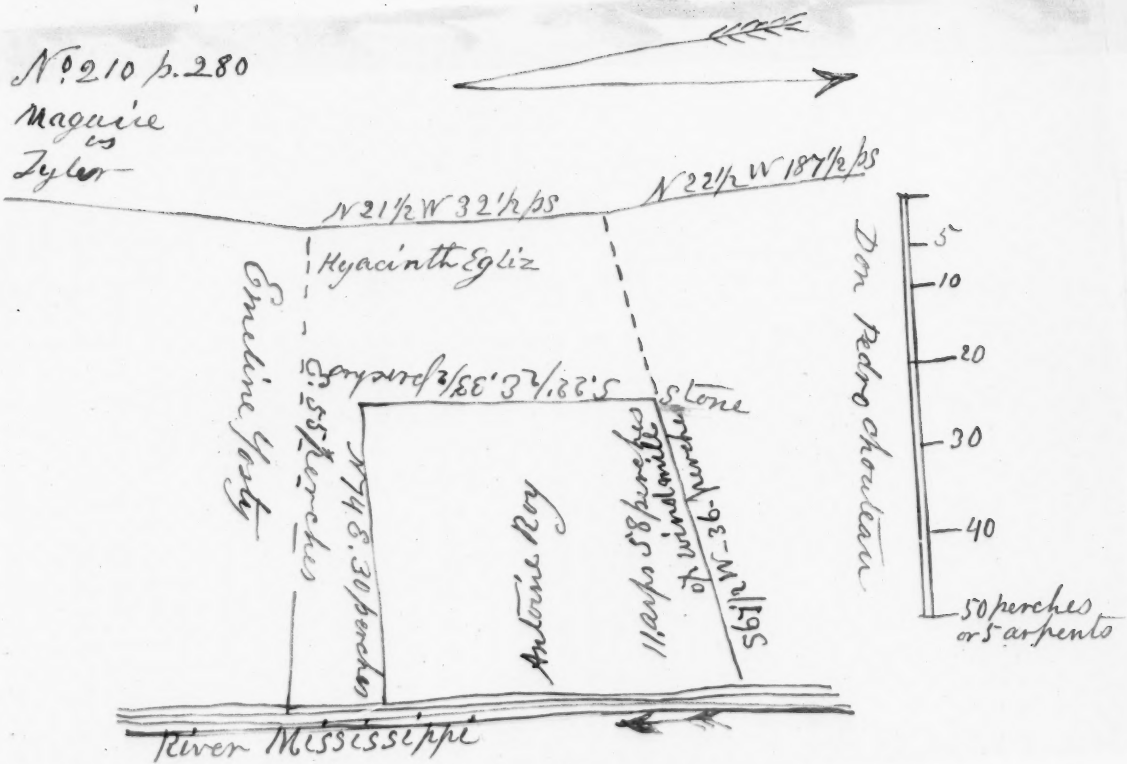
In consequence of the above order, dated July 5th, 1797, we, engineers of the king, undersigned, engaged in the construction of fortifications in Upper Louisiana, went on the ground which makes the subject of this petition of the other side, in order to examine if the mill which Mr. Roy proposes to build there can prejudice the place by its position. Although we have discovered that the land mentioned in the petition as being three hundred toises (a toise is a fathom or six feet) from the Half Moon (Demi Lune), is in strictness only two hundred and forty-six toises, and that this distance is much within the limit prescribed by the ordinances, we nevertheless believe that the mill in question may be built on the said land without damaging the town, the surrounding country offering to the enemy on the same side positions nearer to the town, from which he may injure the defences with greater effect, and he would never elect as a place for his battery a tower of only ten feet in diameter, and a thickness proportioned to the purposes for which it is designed, and which may be readily destroyed by the artillery of the fort, since the heights between (the land) and the fort will present points nearer the fort, and which may in a few hours be rendered fit for receiving the artillery of the besiegers.

(Signed) DEFINIELS,
L. VAN DEN BINDEM.

St. Louis of Illinois, 6th July, 1797.

St. Louis of Illinois, the 7th July, 1797.

I accede to the above demand, under the conditions expressed by the engineers, and this document is to be deposited in the archives


No 210 p. 280
Maguire
vs
Tyler
N 21½ W 32½ ps
N 22½ W 187½ ps
Hyacinth Egliz
Emeline Yoste
S. 22½ E. 33½ perches
N 74 E. 30 perches
Antoine Roy
11 arps 58 hundredths
S 67½ W 36 perches
to windmill
Stone
Don Pedro Choulean
5
10
20
30
40
50 perches
or 5 arpents
River Mississippi

of the lieutenant-governor, who will give a certified copy thereof to the interested party.

(Signed) CHARLES HOWARD.

St. Louis, Illinois, July 7, 1797.

Inasmuch as the lot demanded by Mr. Antoine Roy is vacant, and a portion of the domain of the king, Mr. Soulard, in his capacity of surveyor of this jurisdiction, shall give possession of the same to the said petitioner, and herein below make of the same a process verbal, which shall serve to deliver to him the concession which he demands, and *and* the whole to be completed to the governor.

(Signed) ZENON TRUDEAU.

St. Louis of Illinois, this 12th July, 1797.

I have the honor to report to Monsieur the lieutenant-governor, that by virtue of his decree hereabove I proceeded upon the land of Mr. Antoine Roy, for the purpose of surveying it, and, as was my duty, I called on Mr. Jacque Clamorgan, his nearest neighbor, who notified me that the land upon which I was about to commence operations had been conceded to him many years since, and prayed me to suspend my operations until you would be pleased to order otherwise. That, however, inasmuch as Mr. Roy had intended to build a mill (he was willing to further his purpose), to abandon an arpent front by the depth that might suit him.

(Signed) ANTOINE SOULARD.

4th of August, 1797.

Inasmuch as Mr. Clamorgan has not done any work on the land to which he pretends, and that the delay granted to begin improvements has expired, without even his having contributed to any charge, Mr. Antoine Roy shall have the preference for the same ground to the extent asked for by him.

(Signed) ZENON TRUDEAU.

A copy, conformable to the original deposited in the archives of this command.

ZENON TRUDEAU.

St. Louis, the 15th July, 1799.

(For plat, see original, page 280.)

The four corners are stones, rammed in with the dross of iron. They are shown in the foregoing plat.

Registered in Book B, of surveys for said post, folio 7, No. 7.

I, Don Antoine Soulard, Surveyor-General of Upper Louisiana, do certify that on the 10th of March, of this present year, (in virtue of the decree, hereto annexed, of the lieutenant-governor of this Upper Louisiana, Don Zenon Trudeau, dated the 7th of July,

1797.) I went on the land of Mr. Antoine Roy to survey the same, according to his demand, for eleven arpents and fifty-eight perches, (58) in superficies. The said survey was executed in the presence of the owner and his adjoining neighbors, with the perch of Paris, 18 feet long, according to the custom of surveying lands in the province of Louisiana, and without regard to the variations of the needle, which is seven degrees and 30 minutes east, as appears from the foregoing plat. The said land is situated at about 8 or 9 arpents north from this town of St. Louis, and is bounded on the north by the land of Mr. Peter Chouteau, south by the land of Mr. Hyacinth Egliz, east by the banks of the Mississippi river, and west by the said land of Mr. Egliz; and in order that the whole may be available, whenever needed, I give the present certificate and the foregoing plat, on which are shown the dimensions of said land, and the limits, both natural and artificial, thereof.

ANTOINE SOULARD,
Surveyor-General.

St. Louis of Illinois, the 7th of June, 1803.

See Record Book D, pp. 147, 148, 149.

St. Louis, 31 March, 1848.

I have correctly translated the foregoing,

ADOLPH RENARD,
Recorder.

Deed of Magwire to L. V. Bogy.

Deed from John Magwire to Lewis V. Bogy. Dated June 6, 1846.

This deed, made and entered into this sixth day of June, eighteen hundred and forty-six, by and between John Magwire and Angeline, his wife, of the county of St. Louis, in the State of Missouri, parties of the first part, and Lewis V. Bogy, of the city and county of St. Louis, State of Missouri, party of the second part, witnesseth: that the parties of the first part, in consideration of the sum of four hundred and seven dollars, to them in hand paid, by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, remise, release, and forever quitclaim unto the said party of the second part, all and singular, the following property, being the same which the said John Magwire, by deed dated on the fourth day of June instant, acquired from Alexander Hamilton, administrator of George F. Struther, deceased, and described therein as follows: that is to say, a certain tract or parcel of land situate in the city of St. Louis, containig sixteen arpents; running on the Mississippi river four arpents, and running back four arpents; being the same tract or parcel of land which the said Struther acquired from Pierre Chouteau and wife, by deed dated June 1st, 1826; which deed is recorded in the Recorder's Office of the county of St. Louis, in Book N, page 77, and to which deed reference is

therein and here also made for a more particular description, to have and to hold the same, together with the rights, immunities, privileges, and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns, forever. The said John Magwire hereby covenanting that he, and his heirs, executors, and administrators, will warrant and defend the title to the premises to the said party of the second part, and to his heirs and assigns, forever, against the lawful claims of all persons claiming by, through, or under him, but not otherwise.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JNO. MAGWIRE. [SEAL.]
ANGELINE MAGWIRE. [SEAL.]

State of Missouri, County of St. Louis, *ss.*

Be it remembered, that on this tenth day of June, eighteen hundred and forty-six, before me, a justice of the peace in and for said county, personally appeared John Magwire, and Angeline, his wife, who are both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned. She, the said Angeline, being by me first made acquainted with the contents of said instrument, acknowledged, on an examination, separate and apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned freely and without compulsion, or undue influence of her said husband.

Taken and certified the date last aforesaid.

GEO. A. HYDE,
Justice of the Peace.

Filed and recorded, June 11th, 1846.

S. D. BARLOW,
Recorder.

State of Missouri, County of St. Louis, *ss.*

I, the undersigned, recorder for said county, do hereby certify the foregoing to be a full and complete copy of an instrument of writing, and also of the certificates of acknowledgment, and of the date of recording thereof, as fully as the same remains recorded in my office, in book Z, No. 3, p. 498.

Witness my hand and official seal of office, this 10th day of March, A. D. 1848.

S. D. BARLOW,
Recorder.

Agreement of John Magwire and Marine Railway Co. Dated January 3d, 1852.

Whereas, the stockholders of the St. Louis Marine Railway Company claim to own four arpents in front, by four arpents in depth, fronting on the Mississippi river, and north on the ditch called Labeaume's ditch; and whereas, at a meeting of said stockholders, in pursuance of the act of the General Assembly of the State of Missouri, approved the fifteenth day of February, A. D. one thousand eight hundred and forty-one, it was resolved that said land should be conveyed *conveyed* to John Magwire, and whereas, there are controversies concerning the same, now, therefore this agreement

Witnesseth, that the said John Magwire covenants and agrees with each and every of said stockholders, their and each of their heirs and executors, administrators, and assigns, that upon being vested with the title of the said St. Louis Marine Railway Company to said land north of said ditch, he, the said John Magwire, will take all lawful ways and means to recover the same, without delay, at his own expense; and in case of a recovery of the whole or any part thereof, he, the said John Magwire, will convey to each and every of the stockholders of the said St. Louis Marine Railway Company, such interest in said land recovered as shall equal one-fourth of the interest at the date hereof, any stockholders, his or her heirs or assigns or legal representatives may have in said land, legally or equitably, that is to say, the stock of said company, being estimated at two hundred shares, and each share every one two-hundredths part of said land; and in case of recovery, said Magwire is to convey to the person or persons representing any share of said stock in said company, one-fourth of the two-hundredth part of the land recovered for each share of stock held by any person or persons at the time of said recovery. The following persons, or their legal representatives, are the owners of the respective shares in the St. Louis Marine Railway Company at the date thereof: Daniel D. Page, seventy shares; Louis A. Benoist, fifty shares; the legal representatives of the late John Mullanphy, thirty shares; Peter Lindell, twenty shares; the legal representatives of Ann Biddle, twenty shares; Mrs. Farrar, widow of Bernard G. Farrar, ten shares.

In witness whereof the said John Magwire hath hereunto set his hand and seal this second day of January, A.D. 1852.

JNO. MAGWIRE. [SEAL.]

In the presence of

Be it remembered, that John Magwire, who is personally known to the undersigned, justice of the peace within and for the county aforesaid, to be the person whose name is subscribed to the foregoing deed as party thereto, this day appeared before me at the county

aforesaid, and then and there acknowledged that he executed the same for the purposes therein set forth.

Taken and certified this 2d January, 1852.

MANN BUTLER,
Justice of the Peace.

Filed and recorded January 5, 1852.

S. D. BARLOW,
Recorder.

State of Missouri, County of St. Louis, *ss.*

I, the undersigned, recorder in and for the county of St. Louis, do hereby certify the foregoing to be a full and complete copy of an instrument of writing, and of the certificate of acknowledgment, and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book F. No. 6, pages 97 and 98.

[SEAL.] Witness my hand and official seal the 9th of February, 1852.

S. D. BARLOW,
Recorder.

Certified copy of grant, survey, and all the proceedings connected therewith, from register de arpentage, of Louis Labeaume tract.

LOUIS LABEAUME.

Etat des terres que reclame Louis Labeaume dont il a remis lis titres concessions et plans ventes et certificats de tents au Bureau du Recorder peur par lui etre lurigis etre suivant la loy du Congres passee le 2 Mars de l'annee, 1805.

Pl. No. 1. Ls. Labeaume concession *concession* de 8000 arpens a lui concedee le 18 de Janvier, 1798, etabli depuis cette epoque, et ratifie par Mr. l'Intendant le 5 de Juillet, 1802. Titre complet No. 2 Ls. Labeaume 374 arpens de terre concedee partie Jh. Brazeau le 20 Juin, 1794, et partie au Ls. Labeaume, le 15 Fevriee, 1799, etablie et cultivee depuis as deus epoques.

LOUIS LABEAUME.

St. Louis, le 26 Fevrier, 1806.

No. 2.

Monsieur Don Zenon Trudeau, capt. au rego. fixe de la Louisiane, lieut. gonvr. et commandt-en-chef de la partie occidentale des Illinois.

Supplie humblement Joseph Brazeau dememant en cette ville de St. Louis, et a l'honneur de vous exposes quel desirerait obteins dans la partie du nord de cette ville, une terre situee au dela du pied de la monticule nommee La Grange de Terre, de la largens de 4 arpens qui s'etendrait des ecors du pied de la monticule nommee La Grange de Terre, de la largens de 4 arpens qui s'etendrait du ecores du Mississippi en allant dans la partie du 6 quart S. 6 sur environ 20 arpens de hauteur qui commencement au pied des coteau

ou si tienoe les sus dite Grange de Terre en remontant jusqu'aux environs du Ruisseau de Pierre dans la partie du N. N. E. pour que la surit terre demander soit bornee du cote de l'est par les ecors du Mississippi et les autres cotes en partie par le domaine de S. M. et en partie par des terre recevirs au dit domaine sur les querelles passe actuallement la presente concession a fin que le supplicant y puisse recollis des fins pour les arriere aux et l'ensemen ser et le suppliant ne cessera de rendre grace a vro bontes.

(Signed) JOSEPH BRAZEAU.

St. Louis, 1 Juin, 1794.

Nous lieutenant gouverneur et commandant-en-chef de la partie occidentale du Illinois, apres avoir examine que la terre demandi appartient au domain de S. M. pour avoir ete en partie recivir au domain de S. M. par l'abandon que les proprietaires anciens en ont fait et l'autre partie n'ayant jamais de concedie et que le tract ne parti prejudice a personne. Je certifie en consequence a avoir mis en possession le Sr. Joseph Brazeau de la portion de terre designee pas su requete ayant 4 arpens de front sur 20 arpens de hauteur qui l'etendant dans la partie du N. et 6 depens le puer du Coteau ou est situer la Grange de Terre en temoulant jusqu'a aux environs du Ruisseau de Pierre Corne d'un cote par les ecors du Mississippi et les cotes opposes par du terre non concedies ou recevirs au domaine de S. M. et les dieux extremites bonnes du cotes des N. N. 6 par les environs des Ruisseau de pierre et l'autre situee des cote des S. S. E. sera bornee par la concession accordee a la nommee Esther, mulatresse libre, et pour en constat.

Nous avons delivre le present pour servis, en la ville de St. Louis, ce 10 de Juin de l'anne 1794.

(Signed) ZENON TRUDEAU.

Don Zenon Trudeau, capitaine au regmt. fixe de la Louisiane, lt. gouvr., en consequence de la demande a nous faite par le Sr. Joseph Brazeau, habitant en cette ville de St. Louis par sa reynote en date des 1re de ce mois et apres l'avoir mis en possession. Nous meme suivant l'acte que nous avons dresse ci devant le 10 des neme novis et au avons concede et concedens au dit Sr. Joseph Brazeau a titre de propriete pour lui ses heries ayant cause ou tour autres representans ses droits la portion de terre ci devant designee consistant en la quantite de 4 arpens de front sur 20 arpents de hauteur, situee dans le Nord de cette ville qui commenceant au del a de la montir nommee La Grange de Terre, s'etendant dans la partie du N. N. 6 presquer aux environs de Ruisseau de Pierre Corne d'un coti pas les ecores du Mississippi et le coti oppose par des terres recevirs au domaine de S. M. sur lesquelles passe la presente concession; dont un des bonte doit etre lorue par la concession de la nommee Esther mulatresse libre, afin quele Sr. Brazeau puisse y

cultiver lefoin dont il a besoin pour ses animaux, on pour ensemenier, demeurant sujette a toutes les charges loix ou impositions quil plaira a S. M. d'imposer a l'avenir.

Donne en la ville de St. Louis le 25 de Juin de l'anne 1794.

(Siga) ZENON TRUDEAU.

Nous Zenon Trudeau, lieutenant-gouvernour commandant en chef civil et militaire de la haute Louisiana, certifions que la concession de la terre ci contre a lá reserve de 4 arps. a ète vendue, cedee et transportee a Louis Labeaume par un secte passe par devant nous le 19 de May de cette presente annee et depose dans les archives de ce poste.

ZENON TRUDEAU.

St. Louis des Illinois, le 12 May, 1798.

2d concession. Don Zenon Trudeau, lieutenant-gouver. commandant en chef civil et militaire de la haute Louisiana, Monsieur Louis Labeaume avec tout le respect qui vous est du a l' honneur de tous representer quil a acquis du Sr. Joseph Brazeau habitant de cette ville une portion de terre a lui concedei, le 20 du mois de Juin de 1794 cette terre ayant tres peu de profondeur, et le suppliant ayant presque tout mis en culture necessite dailleurs de faire des etablissements pour la manutention des manufactures quil nous apropose; demande qu'il vous plaise lui accorder 360 arps. de profondeur, depuis le Mississisippi en remontant le Ruisseau de Pierre 6¼ S. sur 16 arps. de front, le long du Mississippi, a prendre de la descente du chemin dans le Ruisseau, ce qui est le meme front de la terre du suppliant, l'angle forme par la prependiculaire du chemin au fleuve, par le Ruisseau et par le fleuve completera à par pres la terre demandee par le suppliant, qui à monsieur, l'honneur de vous observer que cette terre est absolument de pourvree de bois et ne peut servir qu'à des paturages dons le suppliant a besoin pour l'entretien des animaux qu'il est oblige d'avoir pour ses etablissement.

(Signed) L. LABEAUME.

St. Louis, de Febrero, 1799.

Constandome que la tierra que se solicita se halla totalmente desprovieda de madera y lena, que es montrosa y cortuda de baranios y impropia para el cultivo, no perdiendo servin que para el pasto de alguros animales de que se pue de necessitar para in utilidad d'd-dine que se propose unformo el sor. gobr. genl., que la concession que se pide seva favorable al interesado esta circumstancias el agr. Dn. Ant. Soulard pondra el expresado interesado en posecion y formalisara su aper a continuacion para servir a solicitar d'd mismo senr. gobr. genl. el titulo in forma que se desca.

(Signed) ZENON TRUDEAU.

...Antonio Soulard A. gov. par de los esta...
...certificio que el dos de margo d'el pre...
...decreto que antecede d'el Senr. Don Zenon...
...de Estos Estable) me ha transferido a l...
...me para tomar in ella las medidas de...
...expedimiento de 374 a. planos de superf...
...medido en presencia del proprietario y d...
...la medida de Paris de 18 pies de largo s...
...ada en esta Prova. de Luisa. cuya tierra se...
...el N. de esta villa de St. Luis lindando pa...
...orilla del arroyo de Pierre, y por el Dona...
...con las tierras de varios habitantes, par el...
...y par el o con las tierras vacantes del Domi...
...ntiendo combenga le doy el presente co...
...procede en el egual se indican las dimenci...
...artificiales de dicha tierra.

(Signed) AN

En St. Louis del Illinois, a 10 de April, del

See Record Book C, pp. 338, 339, a

(Here follows proceedings of the old
22d, 1810, and June 14th, 1811. Fo
42 of this transcript.—Clerk.)

Louisiana Commissioners'

We the undersigned, commissione
the titles and claims to lands in
decided that Louis Labeaume, orig
patent under the provisions of the
Congress of the United States, entit
to lands in the territory of Orleans and
day of March, one thousand eight hundr
hundred and fifty-six arpents of land, situate
Louis, on the Mississippi, and order that the
agreeably to a concession from Zenon Trudeau to Louis
recorded in book C, page three hundred and thirty-nine, of the re-
corder's office.

Zenon Trudeau,

Nota las mojones de Piedras dispuestos de 20 a de distincia entre ellos con nevrumbre a los pies, todos arboles que se Hallaron fueron marqua dos de maseas, lib. A, fo 8, No. 13.

(For plat, see original, page 289.)

Don Antonio Soulard A. gov. par de los estable's de la alta Luisiana, certificio que el dos de margo d'el presente anno (in virtud d'el decreto que antecede d'el Senr. Don Zenon Trudeau, denente de gober. de Estos Estable) me ha transferido a la tierra de D. Luis de Labeaume para tomar in ella las medidas de agrimenserva, arregla das a supedimiento de 374 a. planos de superficie, argas medidas se hautenado en presencia del proprietario y de los vecinos l'inderos con la medida de Paris de 18 pies de largo segan comtumbre adoptada en esta Prova. de Luisa. cuya tierra se halla situada a 3m, en el N. de esta villa de St. Luis lindando par el lado del N. con la orilla del arroyo de Pierre, y por el Dona de S. M., par el del S. con las tierras de varios habitantes, par el E. con el rio Mississippi y par el o con las tierras vacantes del Dominio Real, y para que constidende combenga le doy el presente con el plano figurativo, que precede en el egual se indican las dimenciones y limites naturales y artificiales de dicha tierra.

(Signed) ANTOINE SOULARD,
Agr. partr.

En St. Louis del Illinois, a 10 de April, del anno de 1799.

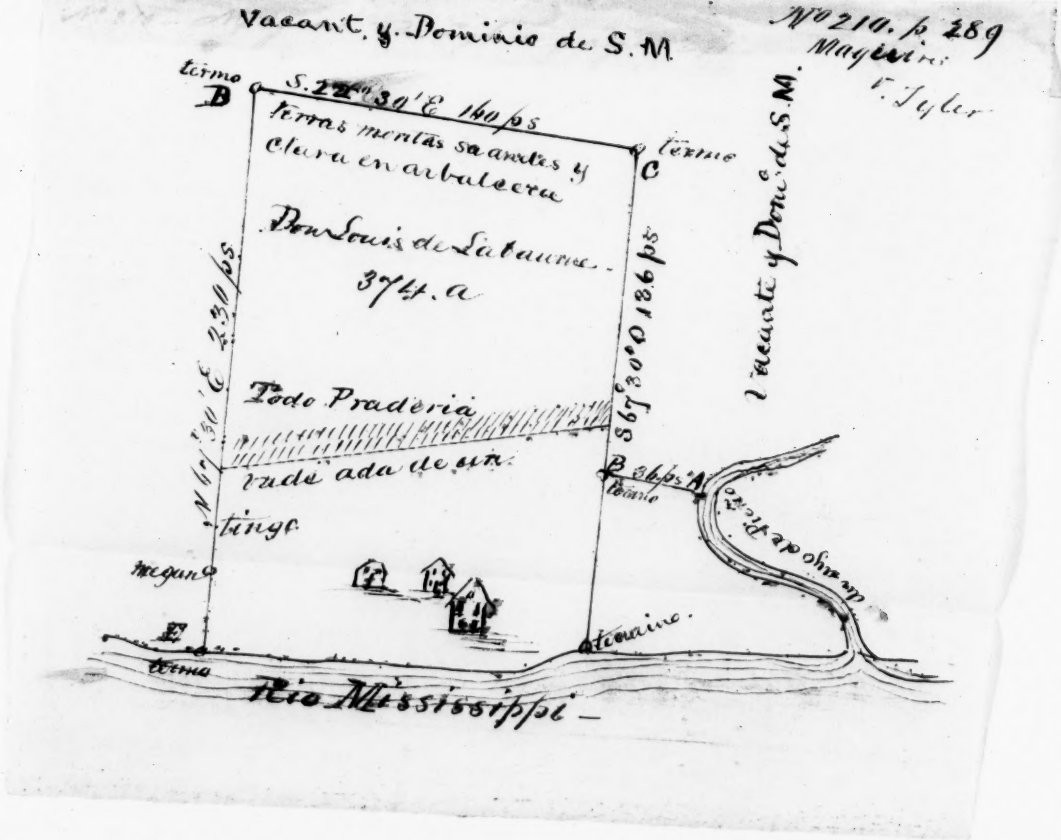
See Record Book C, pp. 338, 339, and 340.

(Here follows proceedings of the old board, Sept 3d, 1806, Sept. 22d, 1810, and June 14th, 1811. For which proceedings see page 42 of this transcript.—Clerk.)

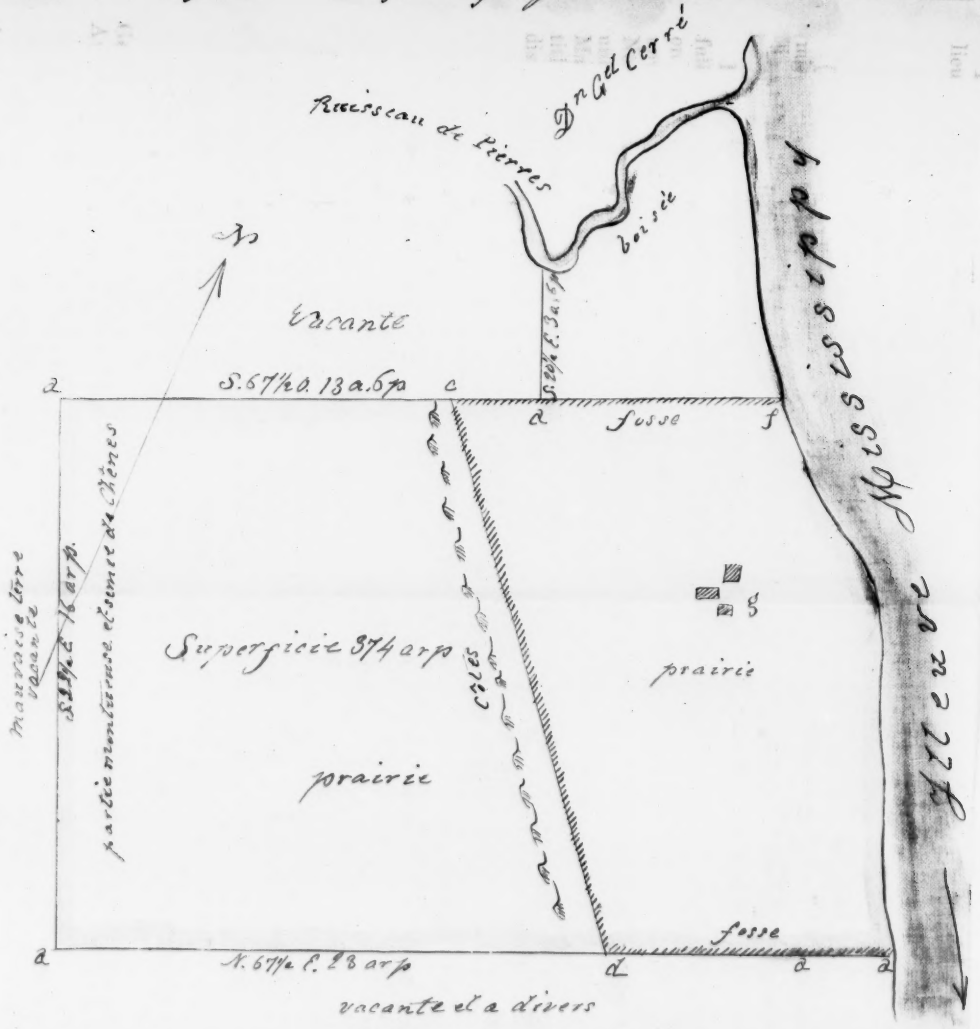
Louisiana Commissioners' Certificate, No. 982.

June 14th, 1811.

We the undersigned, commissioners for ascertaining and adjusting the titles and claims to lands in the territory of Louisiana, have decided that Louis Labeaume, original claimant, is entitled to a patent under the provisions of the fourth section of an act of the Congress of the United States, entitled "An act respecting claims to lands in the territory of Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for three hundred and fifty-six arpents of land, situate in the district of St. Louis, on the Mississippi, and order that the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume, recorded in book C, page three hundred and thirty-nine, of the recorder's office.


Vacant. y. Dominio de S.M
Nº 210. p. 289
Mayeux
T. Tyler
termo
B
S. 22° 30' E 160 ps
terras montas sa anadas y
clara en arbaleeras
termo
C
Don Louis de Labauve.
374. a
Todo Pradería
Vacante y Dom.º de S.M.
S 67° 30' O 186 ps
N 67° 30' O 230 ps
Vada ada de un
tinge
B 3 bps A
termo
camino de Pico
Megano
E
termo
terraine.
Rio Mississippi

N.° 210 - Magins to Tyler. page 1.



By virtue of a concession or order of survey from Zenon Trudeau, lieutenant-governor.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
F. BATES.

(Here follows commissioners' certificate No. 983. For which commissioners' certificate see pages 42 and 43, this transcript.—Clerk.)

RECORDER'S OFFICE, ST. LOUIS, 3d March, 1848.

I certify that the foregoing, from pages one to pages six, is a full and complete transcript from the books, records, and documents on file in this office, of the claims to land which were confirmed under certificate No. 982 to Louis Labeaume, and under certificate No. 983 to Joseph Brazeau, by the board of commissioners appointed under the fifth section of the act of Congress approved the 2d of March, 1805, entitled, "An act for ascertaining and adjusting the titles and claims to lands within the territory of Orleans and the district of Louisiana."

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

(For map, see original, page 291.)

No. 13. Dn. Louis Labeaume.

NOTA.—*a*. Bornes de pierres, temoins de mache fer.
b. Un Liard, dans le Ruisseau.
c, *d*, *e*, *f*. Que desinent l'etendue de terre chose par un fosse.
g. Maison de metre cabanne, grange, &c.

Situee a 3 milles environ dans le N. de St. Louis.

Arpentee le 2 Mar., 1799, en vertu des decret de Mc. le Lnt. Genr., en datte du 15 Feber. certifical d'arpentage, Expedie le 10 Avril.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS,
ST. LOUIS, 20th of April, 1853.

I certify that the above plat, and marginal notes and references thereto, are correctly copied from page 130 of "Registre d'Arpentage" kept in this office.

D. A. SPAULDING,
Surveyor General.

Translation of the above.

Bad land vacant.

(For plat, see original, page 292.)

Surveyed on the 2d of March, 1799, in virtue of the decree from the lieutenant-governor, dated the 15th February.

Certificate of survey, delivered on the 15th of April.

Bill of Exceptions.

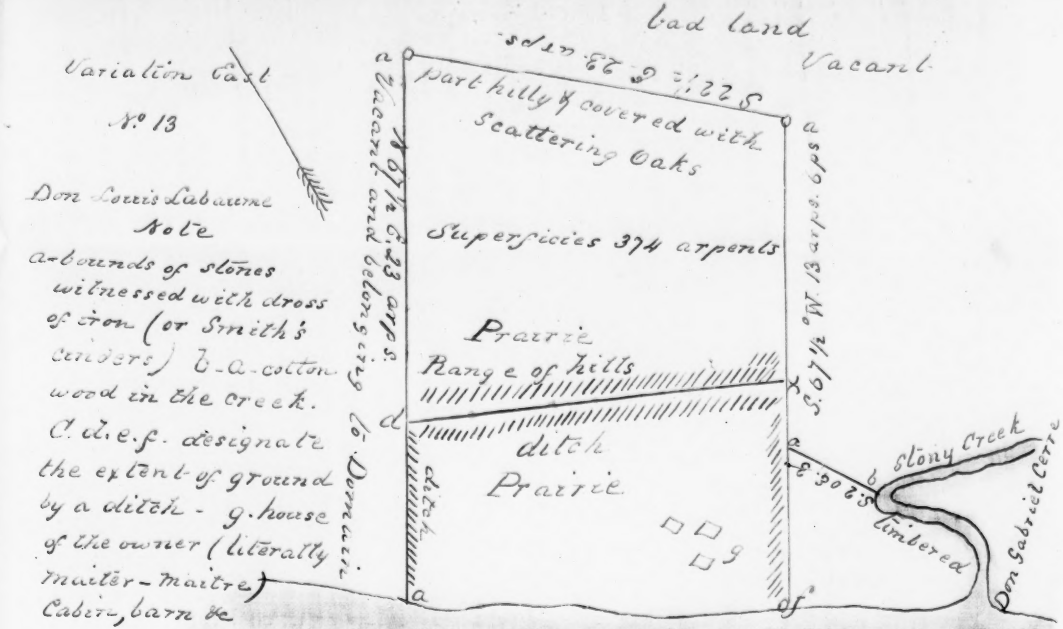
Defendants also offered in evidence the grant and survey to P. Chouteau, and all the proceedings touching the same before the board of commissioners in 1809, as follows:

Grant, Survey, &c., of P. Chouteau.

Pierre Chouteau claims for himself and sons the following tracts of land, viz.: he claims 7056 arpents, &c.; he also claims 133 arpents of land on the Mississippi, near the town of St. Louis, about ten miles, granted to him by Don Carlos Dehault Delassus, on the 16th day of October, A.D. 1799.

Chouteau's 2d Claim.

A Don Carlos Dehault Delassus, Lieutenant-colonel aggrege, au Regmt. fixe de la Louisiana, and lieutenant-governeur de la partie haute de la meme province. Don Pedro Chouteau Sr. de unlice et commandant dufort Carondelet, chez les nation des Osages a l'honneur de vous representer que le mangue total demoulins a farine dans ce pays, et la necessite que prescrit la diminution visible du commerce des pelleteries sont les raisones qui leu ont fait concevoir le projet de si livrer a celui plus durable des grains et qui en meme tems procurera au cultivateur un debouche moins precaire que celui qu' ils ont en jusqu'a a present, a concee le projet de la construction et un moulin a farine superfine sur bateau, quil compte placer sur le fleuve Mississippi a environ un mile de cette ville, dans un endroit qui le mettra entierement a l'abri des glaces, mais considerant que pour former cet etablissement tres dispendieux, il a beson d'ar emplacement assey vaste pour la construction de ses magazins, &c., en consequence il a honneur de vous supplier et avoir la bonte de lui accordee au Sieur Antoine Roy l'etablissement d'un moulin a vent, en annullation des pretentions de Mr. Jacques Clamorgan souvait avoir sur la dite terre pour des raisons mentionnees dans le decret annexe a la vernee comme il suit, au N. par la ligne de la terre de Mr. Louis Labaume; au sud par celle du Sieur Ant. Roy, a l' E. par le fleuve et a l' O par le Domc. de la Majeste; la dite terre pas-



Situated at about 3 miles north (N) of St Louis

N.°210- page 292
Maguin TJ Tyler

Don Louis Labaume –
Josephine one de estacadas
piedra
N 74 E 70 perches
B
piedra
Don Pedro
Chouteau
133 arpents
Dominio Roy a L
N 22½ O. 194 perches
partida alta y montuosa
generalmente
bastante
Rio Missouri
piedra
56 7/10 O 60 ps
ant Roy
N 0 210
p. 294
N ¼ E 90 ps

sant sur les cotes et a distance de 6 as. du fleuve, ce qui sera su profondeur, tout a la superfecie, elle me peut etre determine que parle arpentage quil vous plaira d'ordonner. Le suppliant espere de son pour le service de S. M. et de votre justice, qu'il vous plaira favoriser un etablissemente, qui pourra devenir utile au public, en lui accordant la grace qu'il solicite.

(Signed) PIERRE CHOUTEAU.

St. Louis, 15 8bre, 1799.

St. Luis de Illinois, 16 de 8bre de 1799.

Visto lo expriesto en el antecedente memorial y en virtud de los justos motivos que representa el supte. y en concideracion d un decreto de mi predecessor el Sr. Lte.-Col. Don Zenon Trudeau, de 4 de Agosto de 1797, puesto al pie del memorial del Sr. Anto. Roy, de sedonde consta que la tierra que sa pide quedaba al Dom. Real el Agbr. de esta Luisiana alta, Dn. Antonio Soulard, pondra el exponente en pocesion de la tierra que solicite, para que depues de apes, y praticados las operaciones convenientes, se entreque a la parte la correspondiente certificacione de apeo, para que le sivra a obtener el titulo de concecion en forma del Senor Intendente-Genl. de stas provincias a quien par orden de S. M. corresponde primativamente el repartir y conceder toda chase de tierras real engas.

(Signed) CARLOS DEHAULT DELASSUS.

(For plat, see original, page 294.)

Nota.—Los quatros terminos y los mojones sou de piedra, cimentados con esesria de faguce y indicados en el plano figurativo. Asentado al Lib. B, de los cap. de apeos pd. dicho puesto, folio C, N. 6.

Don Antonio Soulard, agr. pr. de la Alta Luisiana, certifico que que el 10 de Marzo de este presente ano (en virtud del decreto que acompana del Sor. Thente. de Gobor. y subdelgado de Re. Hacienda, Don Carlos Dehault Delassus, en fecha de 16 de 8bre. del ano 1799), me he transfendo a la tierra de Don Pedro Chouteau, para praticar el apeo areglado u supedimiento de 133 arpens planos, cuyas medr das se hautomado en presencia del propriatario y de los occinos linderos, con la percha de Paris, de 18 pies le largo.

Segun constumbre adoptada en esta provincia de la Louisiana, y sin tocar a logue puede dor desi la variacion de la Aguja que esde 7 gos y 30 m. E. como consta del plano figurativo que antecede; cuya tierra se halla situada como a 12 arps. al norte de esta villa de St. Louis, lindado al N. con tierra de Dn. Luis Labaume, als. en partida con otra tierra de Dn. Antonio Roy, 7 de Jacinto Egliz, al E. con la avilla del Rio Mississippi, y al O. con las tierras valdias del Domo. Real., y para que courte donde combenja le doy el pre-

sente con el plano figurative que precede, en el qual se imlican los dimencionas y limites naturales y artificiales que rodeau dha. tierra.

(Signed) ANTONIO SOULARD,

En St. Luis de Illinois, a 17 de Junio de 1803. Agr.

See Record Book C, pages 377, 378 and 379.

Wednesday, January 25, 1809.

Board met. Present, the Hon. Clement B. Penrose and Frederick Bates, commissioners.

The Hon. John B. C. Lucas appeared at the board, and took his seat.

Pierre Chouteau, claiming 133 arpents of land, situate on the river Mississippi, near the town of St. Louis, produces to the board a concession from Don Carlos Dehault Delassus, lieutenant-governor, for the same, dated 16th October, 1799, which land claimant petitioned for, for the purpose of erecting granaries and other buildings for a floating mill, which he was about to build on the Mississippi. Claimant renounces all claim to 39 arpents and 99 perches of the land claimed, which interferes with the land heretofore surveyed, leaving the quantity at present claimed 93 arpents and 1 perch. Claimant states that his claim interferes with one of Jacques Clamorgan, as assignee of Esther, a mulatress, recorded in Book C, page 159, for testimony, &c.

Book No. 1, p. 485.

Sylvester Labbadie sworn, says, that about 8 years ago he saw two flat-boats built by claimant at Florissant, for the purpose of erecting a mill; said boats were moved down, and moved opposite to the land claimed, and a mill was erected thereon by claimant, which mill afterwards went into operation. That about 6 years ago claimant built two barns on the land claimed, which have been used for claimant ever since.

Laid over for decision. Board adjourned.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See book No. 3 of the minutes of the old board, pages 442, 443, 444, and 445.

Friday, February 17, 1809.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

On application of Pierre Chouteau for a decision in his claim of 93 arpents and one perch of land, situate above the town of St. Louis, stating that said land has been taken in execution as the property of Jacques Clamorgan, said claim interfering with Jacques Clamorgan as assignee of Esther, a mulatress, recorded in book C.,

p. 159, of the recorder's office, claim of Pierre Chouteau acted on in book No. 3, p. 443, that of Jacques Clamorgan in book No. 1, p. 485; the claim of Roy also interfering, see book No. 3, p. 374. The board agree to take up the same. On a question being made to take up the claim of Jacques Clamorgan, assignee of Esther, mulattress, Clement B. Penrose and Frederick Bates, commissioners, voted for it, having reference to the concession on the claim of Antoine Roy for 600 feet square. John B. C. Lucas, commissioner, voted against it, because that said claim is not laid over for decision, and the time given by the board for the taking of testimony in claims is not expired. The board are of unanimous opinion that the claim of Jacques Clamorgan, assignee of Esther, mulattress, ought not to be confirmed.

In the case of Pierre Chouteau, claiming 93 arpents and one perch of land, book No. 4, p. 443. The board unanimously confirm to Pierre Chouteau 93 arpents and one perch, and order that the same be surveyed, so as not to interfere with the field lots of the Little Prairie, adjoining the town of St. Louis.

Board adjourned.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See book No. 3 of the minutes of the old board, pages 475 and 476.

Wednesday, May 29, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Certificate No. 71. Pierre Chouteau, book No. 3, p. 476. Survey at expense of the United States.

Board adjourned till to-morrow, eight o'clock A. M.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See book No. 5 of the minutes of the old board, pages 157 and 159.

Louisiana Commissioners. Certificate No. 671.

May 29, 1811.

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to land in the territory of Louisiana, have decided that Pierre Chouteau, original claimant, is entitled to a patent under the provisions of the 4th section of an act of Congress of the United States, entitled "An act respecting claims to land in the territories of Orleans and Louisiana," passed the third day of March one thousand eight hundred and seven, for ninety-three

arpents and one perch of land, situate in the district of St. Louis, and order that the same be surveyed so as not to interfere with the field lots of the Little Prairie, adjoining the town of St. Louis, by virtue of a concession or order of survey from Don Carlos Dehault Delassus, lieutenant-governor.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See original certificate No. 671, on file.

RECORDER'S OFFICE, ST. LOUIS, 31 March, 1848.

I certify the foregoing to be truly transcribed from the books and records (at the pages therein mentioned) and the files of this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Translation of these parts of the foregoing documents which are in the French and Spanish languages.

Chouteau's 2d Claim.

To Don Carlos Dehault Delassus, lieutenant-colonel of the stationary regiment of Louisiana, and lieutenant-governor of the upper division of the same province. Don Pierre Chouteau, lieutenant of the militia, and commandant of Port Carondelet, among the Osage nations, has the honor to represent to you that the total want of flouring mills in this country, and the necessity which prescribes the visible diminution of the trade in furs, are the reasons which have led him to conceive the project of abandoning this for the more durable one in grain, and which shall procure for the cultivation a less precarious opening than the one which they now have. He has conceived the project of constructing a mill for making superfine flour upon a boat, which he intends placing upon the river Mississippi, about one mile from this town, in a place which will be entirely defended from the ice. But considering that, to complete this very expensive establishment, he must have a place sufficiently large for the construction of his storehouses, &c., he consequently has the honor to beg you to have the goodness to grant to him, at the same place above designated, the vacant space of land between that granted to Mr. Antoine Roy for the establishment of a windmill, and in annulling the pretended claims of Mr. Jacques Clamorgan to the said land, for reasons mentioned in the decree annexed to the petition of the said Monsieur, under date of August 4th, 1797, which is situated and bounded as follows: on the north by the line of Mr. Louis Labeaume, on the south by that of Mr. Antoine Roy, on the east by the river, and on the west by the domain of his majesty, the said line passing upon the hill at the distance of six arpents from

the river, which will be its depth. As to its superficial extent, it can only be determined by actual survey, which it shall please you to order.

The petitioner thought, from his zeal in the service of his majesty, and from your justice, that it will please you to order. The petitioner hopes, from his zeal in his majesty's service, and your justice, that you may be pleased to foster an establishment that may become useful to the public, by granting him the favor which he solicits.

Signed, PIERRE CHOUTEAU.

St. Louis, 15th October, 1799.

St. Louis of Illinois, 16th October, 1799.

Having seen the statement set forth in the foregoing petition, and in consideration of the just motives advanced by the petitioner, and a decree of my predecessor, we, Lieutenant-Governor Don Zenon Trudeau, of the 4th of August, 1797, written at the foot of the petition of Mr. Antoine Roy, from which it appears that the land asked for remains reunited to the royal domain, the surveyor of this Upper Louisiana, Don Antonio Soulard, shall put the petitioner in possession of the land asked for, which being done, and the operations of survey completed, he shall deliver to the interested party his certificate thereof, that it may serve to obtain the title of concession in due form, the intendant-general of the provinces, to whom alone by order of his majesty is delegated the right of distributing and conceding all classes of regal lands.

Signed, CARLOS DEHAULT DELASSUS.

(Here follows the survey to Pierre Chouteau [translation]; for which survey of P. Chouteau, see pages and of this transcript.—Clerk.)

St. Louis, 31st March, 1848.

I have correctly translated the foregoing.

ADOLPHE RENARD,
Recorder.

Bill of Exceptions.

To the reading of which, and each of which, the plaintiff at the time objected, on the ground that the same was not competent evidence in this cause; but the court overruled the plaintiff's objection, and allowed said grant, survey, and proceedings, to be read; and the plaintiff at the time duly excepted.

In rebuttal, plaintiff reads in evidence the following papers—his protest filed with recorder of land titles, dated Jan. 22, 1852.

Protest of Magwire to Recorder of Land Titles.

St. Louis, January 22d, 1852.

To Adolph Renard, Esq.,
U. S. Recorder of Land Titles.

Sir: I have been informed that an official survey has recently been made of four by four arpents of land, under a concession to Joseph Brazeau, north of the Big mound, in the city of St. Louis; which survey, I have also been informed, locates said four by four arpents south of Labeaume's ditch. I have also been informed that said survey has been approved by the surveyor-general of this district, and that you have been requested by some party or parties to issue a patent certificate, in conformity with said survey.

Now I hereby protest against the issuing of a patent certificate upon the said survey, and protest against the location of said four by four arpents, as the legal representative of Joseph Brazeau, and lay before you the evidence of my being such legal representative, to wit: A copy of a deed made by said Brazeau to Pierre Chouteau, No. 1; copy of a deed from said Chouteau to George F. Strother, No. 2; and a copy of a deed from said Strother's administrator, No. 3. I also inform you that suits in ejectment, to recover the possession of the said four by four arpents—to locate, as the same should be, north of Labeaume's ditch—have been instituted in the Circuit Court of the United States, in this district, and in the St. Louis Court of Common Pleas, which suits are now pending, and the trial of them will determine the proper and true location of said four by four arpents, confirmed by the United States to the said Brazeau, and now claimed by me, as his legal representative.

I have to request that you communicate this paper, with the exhibits numbered from one to three, inclusive, to the commissioner of the General Land Office, and ask for his instructions in the premises.

Respectfully, JOHN MAGWIRE.

Received this notice January 22d, 1852.
ADOLPHE RENARD.

Protest of P. Chouteau, filed with Surveyor-General in 1818.

June 24th, 1818.

Sir: With all the respect which I most sincerely entertain, I take the liberty of addressing you on a subject interesting to me on account of the property which it embraces, and of great public consideration as to the principles which it involves.

Of this affair, you have had heretofore no official information, although it has already been the subject of conversation between us.

By reference to the books of the recorder of land titles, C., page

398, it will be found that I was put in possession by the Spanish government, under decree of the 16th of October, 1799, of that lot or parcel of land which is bounded by the Mississippi in front, on the south in part by Antoine Roy, on the north by Louis Labeaume, and extending in depth about six arpents from the river. That under the first act passed by Congress for the adjustment of land titles, I presented this claim, against which no charge of irregularity ever was or could be made. Yet, in the superabundance of my own caution, and deference for the possible rights of others, I did, when this claim was before the commissioner, abandon as much thereof as might be found to interfere with the front of the field lots. It is not for me to account for the plan or mode of entry employed by the board in recording this abandonment; the act is theirs, not mine. It was understood then, and now, and always, that it was not my purpose wantonly to throw away land so valuable; the object was to decline a contest with any holders of field lots to the west of my tract. But to the north to Labeaume's, and to the east to the river, it was well known that there was no private pretensions, other than those which had been merged in mine. Of this latter description is that of Esther, mulatress, for 80 arpents, registered in Livre Terrien No. 5, and recorded in the books of the recorder of land titles, C., page 159. Esther's claim has never been abandoned, and it is mine by bona fide purchase of record. Under all these circumstances, it is with surprise and regret that I have heard of a location of a New Madrid certificate between the mound and the ditch of Labeaume. Surely the United States have no land there, and it is evident that the relief provided for by the act of 17th February, 1815, can only be extended out of the property of the Government; and that cannot be the property of the Government which has not been decided against claimants by Congress.

These considerations premised, it is the object of this letter to refer you to the record above cited, as well as the old survey in your own office, and to protest against the return of any survey of a New Madrid location within the above-mentioned limits, as the vacant lands there are mine by concession of the Spanish government, and by general allowance of the United States commissioners.

I am, very respectfully, sir, your obedient servant,

PIERRE CHOUTEAU.

To GEN. WILLIAM RECTOR,
U. S. Surveyor for Illinois and Missouri Territories.

Letter of Commissioner of General Land Office, dated Jan. 14th, 1858.

(Copy.)

GENERAL LAND OFFICE, January 14, 1858.

Sir: I have the honor to acknowledge the receipt of your letter of this date, referring to my report of the 12th inst., in the case o

Labeaume and Brazeau, and desiring to know my opinion as to the propriety of cancelling the Brazeau patent. Taking the decision of the appellate authority, that of one of your predecessors, Mr. Stuart, as binding upon this as a subordinate authority, the patent, in my opinion, cannot now properly be recalled and cancelled because the survey to Brazeau was made in pursuance to that decision. But were we not controlled by that decision, and our opinion desired as a matter independently of it, and as indicating the sense of this office primarily in the premises, I have the honor to report that, according to the deliberate decision of this office in 1847, the location assigned to Brazeau in the patent is an error, and it would follow that the patent should consequently be withdrawn and cancelled.

With great respect, your obedient servant,

Signed, THOS. A. HENDRICKS,
Commissioner.

HON. JACOB THOMPSON,
Secretary of the Interior.

Letter of Secretary of Interior, dated February 4, 1858.

(Copy.)

DEPARTMENT OF THE INTERIOR, Washington, Feb. 4, 1858.

Sir: Having considered your reports of the 12th, 14th, and 28th ultimo, and the papers therewith, relative to a patent which has been issued to the representatives of Joseph Brazeau under the decision of my predecessor of July 25, 1851, it appears that Brazeau's representatives have never asked a survey or patent for the land in said patent described, and that they have refused to receive said patent.

Let it be accordingly recalled, but this order you will not construe or regard as in any way affecting or impairing the above-mentioned decision of my predecessor.

Very respectfully, your obedient servant,

Signed, J. THOMPSON,
Secretary.

The Commissioner of the General Land Office.

Deed of Louis V. Bogy and wife to John Magwire, June 23, 1846.

This deed, made and entered into this twenty-third day of June, eighteen hundred and forty-six, by and between Louis V. Bogy and Palagia, his wife, of St. Louis, Missouri, party of the first part, and John Magwire, of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of four hundred and seven $\frac{50}{100}$ dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does remise, release, and forever quitclaim unto the said party of the second part the following property, viz.:

A tract of land lying and being north of what is known as Labeaume's ditch, and being the same land conceded to one Joseph Brazeau by the Spanish government, and sold by the said Brazeau to one Pierre Chouteau, and by the said Pierre Chouteau to George F. Strother, by deed dated the first of June, A.D. 1826, and which deed is recorded in the recorder's office of the county of St. Louis, in Book N., page 77, which said tract of land contains the quantity of sixteen arpents, that is to say, four by four arpents; it being intended hereby to convey to the said party of the second part all of the said (16) arpents of land which may be north of said Labeaume's ditch, but no portion of the same which may be south of said ditch: To have and to hold the same with all the rights, privileges, and appurtenances thereunto belonging, unto him, the said party of the second part, and to his heirs and assigns, forever; the said party of the first part hereby covenanting that his heirs, executors, and administrators, will warrant and defend the title to the said premises to him, the said party of the second part, his heirs and assigns, against the lawful claim or claims of all persons claiming or to claim the same, or any part thereof, by, from, through, or under the said party of the first part, but not otherwise.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

LEWIS V. BOGY. [SEAL.]
PELAGIE BOGY. [SEAL.]

Done in presence of
(the erasure on the 5th line was done
before the signing and delivery.)
E. WITTENBERGER.

State of Missouri, County of St. Louis, *ss.*

Be it remembered that on this twenty-third day of June, eighteen hundred and forty-six, before me, the undersigned, a justice of the peace in and for said county, personally came Lewis V. Bogy and Pelagia his wife, who are personally known to me to be same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed, for the purposes therein named mentioned. She, the said Pelagia, being by me first made acquainted with the contents of said instrument, acknowledged, on an examination separate and apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned freely and without the compulsion or undue influence of her said husband.

Taken and certified the date last aforesaid.

GEO. A. HYDE,
Justice.

State of Missouri, County of St. Louis, *ss.*

I certify the foregoing deed was, on the 23d day of June, 1846, filed for record in my office, and is truly recorded in book B., No. 4, page 124 and following.

Given under my hand and official seal at St. Louis, the date aforesaid.

S. D. BARLOW,
Recorder.

Letter of Commissioner of General Land Office to Recorder of Land Titles, dated February 8th, 1858. (Copy.)

GENERAL LAND OFFICE, February 8th, 1858.

Sir: Herewith I transmit a copy of a letter of the 4th instant, from the honorable secretary of the interior to this office, calling for the return of the patent issued 25th March, 1852, as recorded vol. 2, pages 172 to 178 inclusive, in favor of Joseph Brazeau or his legal representatives, survey No. 3332, T. 45, N. R. 7 E. 5th Pr. Meridian, Mo., which was sent to you April 30th, 1852, for delivery to the party entitled to receive it.

Very respectfully your
Obedient servant,
THOMAS A. HENDRICKS,
Commissioner.

A. RENARD, Esq.,
Recorder of Land Titles, St. Louis, Mo.

It was admitted that the recorder of land titles, in pursuance of instructions from the commissioner of the general land office, returned to the last-named office the patent which had been issued on survey 3332 to Joseph Brazeau, before this cause was set down for trial at the present term of this court.

On behalf of defendants it was admitted that Louis G. Pecot, claimed to be a representative of Joseph Brazeau as to said reservation, demanded in 1856, the patent to Brazeau of the recorder of land titles, but said recorder refused to give it to him, as he did not consider he was a legal representative of Brazeau. It was further admitted that when said Pecot made said demand, he was the trustee of Ann Biddle, who was an original stockholder in the Marine Railway Company, and to whom the said company two lots in the year 1841, and which lots are situate within the United States survey No. 3332, in the name of Joseph Brazeau.

The foregoing is all the evidence offered or heard on the trial of this cause, and the plaintiff tenders this his bill of exceptions, and asks that it may be signed and sealed and made a part of the record, which is done accordingly.

C. B. LORD. [SEAL.]

The "bill of exceptions" filed as aforesaid in this cause, is in words and figures as follows, to wit:

Bill of Exceptions.

JOHN MAGWIRE, plaintiff,
v.
MARY L. TYLER et al.

Be it remembered that after the finding the facts in this cause, and within the proper time, and by leave duly extending the time for filing a motion for review of said finding, and by consent of the defendants, as in proper time, the plaintiff filed his motion for review, which motion for review is in the words and figures following, to wit:

Motion for Review.

In the St. Louis Land Court, March Term, 1858.

JOHN MAGWIRE, plaintiff,
v.
MARY L. TYLER et. al., defendants.

Be it remembered that on the trial of this cause, which was by consent of all parties submitted to the court without a jury, the following case was made, as appears by the evidence in the cause. (Here insert the paper marked A. No. 1, which is annexed and made part thereof, and which contains all the evidence which was introduced by any party on said trial.)

It was on the said evidence and case, and no other, that the court made the finding of the facts in the cause heretofore entered of record: and on the same case and evidence the plaintiff now moves the court to review the said finding of facts, and to modify, change, or annul the same, so far as to make the finding of the facts in the cause to be in all respects as follows:

(Here insert the paper marked B. No. 2, hereto annexed, and made part hereof.)

And the plaintiff furthermore moves the court, when the facts in the case shall have been found as moved for herein, so to modify, change, and annul the finding of the law of the cause, as to grant the relief demanded by the plaintiff's petition, and award him the execution thereof by the proper judgment.

KRUM & HARDING,
S. T. & A. D. GLOVER,
For Plaintiffs.

The said motion for review is founded on all the evidence in the cause, which evidence is truly stated in said paper annexed to said motion, marked A. No. 1, and made part of the said motion, which includes the said exhibit marked A. No. 1, and the said motion and

the paper marked A. No. 1, shows the case in full on which the said finding of the facts in said cause was made, and the said motion to review is asked, and the court having duly considered the said motion, and by which the court was asked to modify, change, and annul the finding of the facts as heretofore made, and to cause the said finding ef the facts to be as mentioned and set forth in the paper annexed to said motion, and marked B. No. 2, and made part of said motion.

JOHN MAGWIRE
v.
MARY L. TYLER and others.

Viz.: that on the fifth day of October, in the year 1793, the Spanish government conceded and granted to one Esther, a free mulattresse, a tract or parcel of land, situate on the borders of the Mississippi river, and between that and the earth barn Lagrange de Terre, as stated in the plaintiff's petition. That on the twenty-fifth day of June, in the year 1794, the said Spanish government conceded or granted to one Joseph Brazeau a tract or parcel of land of four arpents in front, by twenty arpents deep; described and bounded as stated in the plaintiff's petition. That the said Brazeau was put into possession of the said tract or parcel of land by said government about the time of said concession, and after said land had been surveyed by one Soulard, by and under authority of said Spanish government. That afterwards, on the ninth day of May, in the year 1798, the said Joseph Brazeau, by his deed of that date, sold and conveyed the whole of the said tract or parcel of land conceded and granted him, as aforesaid, to one Louis Labeaume, excepting, however, and said Brazeau, in his said deed, reserved to himself four arpents by four arpents of said tract of land; which four by four arpents, so reserved, were in the southern part of said four by twenty arpents at the foot of the hillock on which stands the earth barn (La Grange de Terre), as stated in the plaintiff's petition. That the said four by four arpents, so reserved by said Brazeau in his said deed to said Labeaume, are situate within the limits of the outboundary line of the village of St. Louis, run in conformity with to the first section of the act of Congress, making further provision for settling the claims to land in Missouri territory. Approved June 1st, 1812. That after said sale and conveyance to said Labeaume by Brazeau, but prior to the fifteenth day of February, in the year 1799, the said Louis Labeaume petitioned said Spanish government for a grant of three hundred and sixty arpents of land, including that which he had acquired of said Brazeau—that is to say, twenty arpents in depth from the Mississippi river, ascending Rocky branch west quarter south, by sixteen arpents front along the Mississippi, to be taken from the descent of the road into the creek, as stated in

plaintiff's petition. That said Spanish government caused the land petitioned for as aforesaid, by said Labeaume, to be surveyed by one Antoine Soulard, acting surveyor under said government, at the time and in the manner stated in the plaintiff's petition.

That the said surveyor made said survey so as to include, and his said survey did include the four by four arpents of land which said Brazeau had reserved to himself, in his said deed to Labeaume.

That the board of commissioners for the adjustment of land titles in the territory of Missouri, on the twenty-second day of September, in the year 1810, confirmed to the said Joseph Brazeau, or his legal representatives, the said four by four arpents, as stated in the plaintiff's petition.

That the said commissioners, on the fourteenth day of June, in the year 1811, issued their certificate of confirmation, No. 983, as stated in the plaintiff's petition. That the said Joseph Brazeau, and his wife, on the twenty-sixth day of June, in the year 1816, by their deed of that date, conveyed all their right, title and interest in said four by four arpents of land to one Pierre Chouteau, which deed was duly recorded as stated in the plaintiff's petition.

That in the month of November, in the year 1817, by authority of the United States, and under the direction of the surveyor-general for the district of Illinois and Missouri, the said four by four arpents of land were surveyed as stated in the plaintiff's petition.

That on the first day of June, in the year 1826, Pierre Chouteau and wife, by their deed of that date, conveyed the said four by four arpents to one George F. Strother, which deed was duly recorded, as stated in the plaintiff's petition. That said George F. Strother, and his wife, on the third day of September, in the year 1830, by their deed of that date, conveyed the said four by four arpents of land to John Mullanphy and John O'Fallon, in trust for the sole use and behoof of the Marine Railway Company, as stated in the plaintiff's petition. That in the month of November, in the year 1840, the said George F. Strother departed this life, and administration, in due course of law, was had on his estate, and in like due course of law all the right, title, interest and estate of said Strother in and to said four arpents of land, were sold by the administrator of said estate, and conveyed to the plaintiff, as stated in the plaintiff's petition.

That on the second day of January, in the year 1852, John O'Fallon (the said John Mullanphy having, before that, departed this life), by authority and direction of said Marine Railway Company, conveyed, by deed, all the right, title and interest of said Marine Railway Company to the plaintiff, as stated in his petition. That the said tract of four by four arpents of land which was confirmed to said Joseph Brazeau, is situated in the northern part of the present city of St. Louis, in the county of St. Louis, on the north side of an old ditch, called and known as Labeaume's south

ditch, as stated in the plaintiff's petition, and with the designation and boundaries therein stated. That all of the defendants respectively claim title, and the right to possess the parts and portions which they do respectively possess and claim of said four by four arpents of land, under one Louis Labeaume, or his legal representatives, and that the defendants do hold, claim and possess, portions of said tract of four by four arpents in the manner and to the extent stated in the plaintiff's petition, and that the said tract of four by four arpents of land, at the time of the confirmation thereof to said Joseph Brazeau, as aforesaid, was definitely located by the metes and bounds substantially as mentioned and described in the plaintiff's petition.

And from the evidence aforesaid the court is asked further to find that said Labeaume, in February, in the year 1806, filed his claim for confirmation, before the said board of commissioners for the adjustment of land titles for the territory of Missouri, and said board of commissioners, out of the land so claimed by said Labeaume, confirmed to him three hundred and fifty-six arpents, and to Joseph Brazeau four arpents, as stated in the defendant's answer.

That said Labeaume made the ditches and inclosures mentioned in the defendant's answer. That under the said confirmation to said Labeaume a survey of the tract of land so confirmed was ordered by the secretary of the department of the interior of the United States government, and in the year 1852 a survey thereof was made, under and in pursuance of the instructions of the said secretary, which survey was so made as to embrace and include within its exterior boundaries the said four by four arpents reserved by said Brazeau, and to him confirmed, and which survey was afterwards approved on the twenty-sixth day of February, in the year 1852, and thereupon a patent certificate was issued by the recorder of land titles, certifying to the effect that Louis Labeaume, or his legal representatives, were entitled to a patent, under said confirmation and survey, for $339\frac{60}{100}$ acres, equal to $399\frac{30}{100}$ arpents. That afterwards, and on the twenty-fifth day of March, in the year 1852, a patent was issued by the government of the United States, granting said tract of land, described in the last mentioned survey, to said Labeaume, or his legal representatives, and to his or their heirs and assigns, saving and reserving, however, any valid adverse rights which may exist to any part thereof. That when said last-mentioned survey was made, and also when said patent was issued, as aforesaid, to said Labeaume, or his legal representatives, the defendants had knowledge and notice that the plaintiff claimed to be the legal representative of said Joseph Brazeau, under and in virtue of the deeds and conveyances, and the documents and proceedings, set out in the plaintiff's petition; and that he claimed to have and hold the equitable title to said four by four arpents reserved by said Brazeau in his said deed to said Labeaume.

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And from the evidence aforesaid, plaintiff asks the court further to find that at the time of the last-mentioned survey was made, and said patent was issued, the plaintiff owned and was right fully entitled to the said four by four arpents of land confirmed to said Brazeau as aforesaid, and that the issuing of said patent caused the legal title to said four by four arpents to be vested in the legal representatives of Louis Labeaume, and that the defendants are such legal representatives.

And also to find the law of the cause as is asked in said motion, the court refused to grant said motion and overruled the same, and would not review said finding, and would not find the facts as asked by plaintiff, and plaintiff excepted to the ruling.

And the court refused to find the law as asked by plaintiff, and he again excepted to the ruling of the court.

And the said defendant, during the progress of said cause, took sundry exceptions at the proper time as noted on the paper annexed to said motion, and marked A, No. 1. And the plaintiff prays that his said several exceptions may be signed, sealed, and made part of the record, which is done.

C. B. LORD. [SEAL.]

Affidavit for Appeal.

The affidavit for appeal filed as aforesaid in this cause is in the words and figures following, to wit:

JOHN MAGWIRE, plaintiff,
v.
MARY L. TYLER et al., defendants.

In the St. Louis Land Court, County of St. Louis, *ss.*

John Magwire, plaintiff in the above entitled cause, being duly sworn, upon his oath states, that the appeal in said cause is not made for vexation or delay, but because this affiant believes that he is aggrieved by the judgment and decision of the court.

JOHN MAGWIRE.

Subscribed and sworn to before me, this 2d day of July, A. D. 1858.

C. A. MANTZ,
Clerk.

The bond filed as aforesaid in this cause is in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, John Magwire, as principal, and Charles K. Dickson and John M. Krum, as sureties, are held and firmly bound unto Mary L. Tyler and others, defendants, in the suit in this court, of John Magwire *v.* Mary L. Tyler and

others, in the sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated St. Louis, this 2d day of July, A. D. 1858.

The condition of the above obligation is such that whereas said John Magwire has appealed from the judgment rendered against him, and in favor of said Mary L. Tyler and others, in the St. Louis Land Court, for costs.

Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal, and shall prosecute his appeal, and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Land Court to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same as far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

JOHN MAGWIRE. [SEAL.]
CHARLES K. DICKSON. [SEAL.]
JOHN M. KRUM. [SEAL.]

Approved by the court, July 2d, 1850.

C. A. MANTZ,
Clerk.
By E. P. WALSH,
D. C.

ST. LOUIS LAND COURT, March Term, 1858.

Be it remembered that on this 2d day of July, 1858, personally appeared John Magwire, the principal, and Charles K. Dickson and John M. Krum, the securities in the foregoing bond, and acknowledge that they executed the same for the purposes therein expressed.

In witness whereof, I hereto set my hand and affix the seal of said court at office in St. Louis, the day and year last aforesaid. [SEAL.]

CHAS. A. MANTZ,
Clerk.

State of Missouri, County of St. Louis, *ss.*

I, Charles A. Mantz, clerk of the St. Louis Land Court, within and for the said county, certify the foregoing transcript to be a true and correct copy of the record and proceedings had (as required) in the case of John Magwire, plaintiff, and Mary L. Tyler and others, defendants, as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of our said court, at office in the city of St. Louis, this eleventh day of September, A. D. 1858. [SEAL.]

CHARLES A. MANTZ,
Clerk.

The foregoing transcript of the record and proceedings of said Land Court was filed in the office of the clerk of the Supreme Court of the State of Missouri, at St. Louis, on the fourteenth day of September, in the year 1858. Afterwards, by said Supreme Court this cause was continued until the next term.

Afterwards, at the March term, 1859, the parties appeared by their respective attorneys, and argued this cause, and submitted it to the court for decision. Afterwards, at the term aforesaid, the court ordered that the submission of this cause for decision be set aside, and the cause continued until the next term for reargument.

Afterwards, at the October term, 1859, the parties again appeared by their attorneys, and by their consent the cause was continued until the next term.

Afterwards, at the March term, 1860, the parties again appeared by their attorneys, and argued this cause, and submitted it to the court for decision. And plaintiffs also produced in court a certified copy of survey No. 3342, the grant to the free mulattress Esther, no objection being made by defendants, said copy of said survey is appended to this transcript.

Afterwards, at the term aforesaid, on the 27th day of June, 1860, the following further proceedings were had in this cause, to wit:

Appeal from St. Louis Land Court.

JOHN MAGWIRE, Appellant
v.
MARY L. TYLER, and others, respondents.

Now at this day come again the parties herein by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by said Land Court rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the court that said respondents recover against said appellant their costs and charges herein expended, and have therefor execution.

And on rendering judgment as aforesaid, the court gave a written opinion, which is in words and figures as follows, to wit:

This case presents substantially the same questions that were before the court when it was here before (25 M. R. 484). Upon the last trial in the Land Court all the evidence was submitted, and there was a finding by the court of the facts; but upon this finding the same questions arise as did upon the demurrer to the bill.

It is unnecessary to repeat what I said when the case was here before, upon the propriety of the location of the Brazeau reservation by survey under the secretary of the interior in 1852. I give no opinion. I consider the case as decided by the case of Cochran

v. West; and if it should turn out that I am mistaken in the construction given to this and other decisions of the Supreme Court of the United States, I prefer leaving to that court an examination into the question of location which will arise in the event that these decisions have been misunderstood.

It has been suggested that the survey of Brown, of two tracts in one, may be treated as the authoritative government survey; and if so, that there is nothing in the principle determined in Cochran *v.* West to prevent a correction of the last survey, which located the Brazeau reservation outside of the Labeaume concession and south of the ditch. But it will be observed that all these surveys, Soulard's, Brown's, and the survey under the directions of Secretary Stuart, were all before the court in the case referred to, and the last was regarded by the court as the authoritative survey.

Upon this ground alone of *res adjudicata*, I am for affirming the judgment of the Land Court.

Judge Ewing concurs in this opinion. W. B. NAPTON.

SCOTT, JUDGE. P. Chouteau owned two parcels of land north of St. Louis. One of these tracts was supposed to lie immediately north of and adjoining the other. On the first of June, 1826, Chouteau conveyed to G. F. Strother these tracts of land by the following descriptions: "All that tract or parcel of land granted to the said Pierre Chouteau in October, 1797, by Charles Dehault Delassus, Spanish commandant, beginning at Roy's line, running north to Labeaume's south line, and extending from the river to the common fields west; it being intended hereby to convey to the said G. F. Strother, his heirs and assigns, all the land contained within the said concession except that heretofore sold by the said Pierre Chouteau, according to his said several contracts, to be limited by the metes and bounds limited and fixed by the intention of the parties at the period of contracting. And one other tract of land, containing four arpents, running on the river and running back four arpents, making sixteen arpents, lying between the north line of the first described tract of land and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume; said sixteen arpents being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by Joseph Brazeau to Pierre Chouteau." The exceptions in the granting part of the deed in relation to the first tract described have no influence in this controversy, as they all lie south of the land in dispute.

On the 3d September, 1830, Strother, by a deed containing an exception not affecting this controversy, conveyed the tracts of land he purchased from Chouteau to John O'Fallon and John Mullanphy, in trust for the St. Louis Marine Railway Company. With the exception above stated, this deed professed to convey to the said trustees the same tracts, pieces, or parcels of land which the said

G. F. Strother purchased from Pierre Chouteau by the deed above mentioned, and the description of the tracts in the two deeds corresponded in substance, if not in words.

On the 31st January, 1851, the St. Louis Marine Railway Company passed the following resolutions: "1st. That the land belonging to or claimed by the St. Louis Marine Railway Company, in the city of St. Louis, and north of what is known as Labeaume's ditch, being four arpents in front on the river and four arpents in depth, and bounded on the east by the Mississippi river, and south by said ditch of Labeaume, and containing sixteen arpents, be conveyed to John Magwire; and that J. O'Fallon, surviving trustee, who holds the legal title to the said land, be and he is hereby directed to make said conveyance to said Magwire, and deliver the same. 2d. That in receiving the deed on the last resolution mentioned, said John Magwire execute and deliver to the stockholders of said company an agreement to commence suits or other proceedings without delay, and at his own expense, for the recovery of the land to be conveyed to him; and on recovering the same, or any part thereof, to convey to each stockholder such portion of said land as shall be equal to one-fourth of what is represented by the stock such stockholders may hold at the time of said recovery." Magwire entered into an agreement in pursuance to this resolution, and on the 2d of January, 1852, John O'Fallon executed to him a deed in which the land is described as set forth in the foregoing resolutions. Thus it appears that the St. Louis Marine Railway Company has employed the plaintiff to prosecute this suit for the company, and the plaintiff cannot be viewed in a more favorable light than the company itself.

Now the concession to Chouteau, as surveyed by the United States, which is the first tract mentioned in the deed from him to Strother, did not extend so far north as it was made to extend by the Spanish survey made for Chouteau under his concession. The Spanish surveyor bounds this concession on the north by the land of Labeaume; and on the figurative plat accompanying the survey there is marked a ditch as the northern boundary of the survey.

Brazeau originally, under the Spanish government, owned the land which is described above as Labeaume's. He sold it to Labeaume, and after Labeaume purchased from Brazeau he obtained from the Spanish government an extension of the limits of the land he so purchased. Brazeau, in making a sale to Labeaume, reserved to himself four arpents of land, to be taken at the foot of the hillock in the southern part of said tract. This hillock is some distance below the ditch marked as the northern boundary of the Spanish survey of Chouteau's concession by Delassus. The space between a line from the foot of the hillock and the ditch would contain some arpents. This hillock, in the earliest Spanish documents concerning Braze[illegible] Labeaume's concessions, transfers, and reservations, is calle[illegible] Grange de Terre. It is a noted object, the

locality of which admitted of no uncertainty or dispute. In July, 1816, Brazeau conveyed to Pierre Chouteau the reservation of the four by four arpents in pursuance, as it is alleged in the deed, to a previous sale. This deed describes the tract of four by four as situated in the south part of the concession to Brazeau, which he conveyed to Labeaume. These facts are narrated not with a view to locate the four by four tract reserved by Brazeau, and by him sold to P. Chouteau, who conveyed to Strother, and who conveyed to the trustees of the St. Louis Marine Railway Company. They are stated to show that there was a ground for dispute as to the fact whether the four by four tract should be located north or south of the ditch.

The government of the United States surveyed and located the four by four tract immediately south of the ditch of Labeaume, and on the 25th of March, 1852, issued a patent therefor to Joseph Brazeau or his legal representatives. The plaintiff, John Magwire, claiming to be the representative of Brazeau, refused to receive this patent, because it did not properly locate the four by four tract, placing it south instead of north of Labeaume's ditch, and during the pendency of the suit the patent was recalled.

In 1856, the patent for the four by four was demanded of the recorder of land titles by Louis G. Picot, trustee of Ann Biddle, who was an original stockholder in the Marine Railway Company, and to whom the said company had conveyed two lots in the year 1841; which lots are situated within the boundaries of the patent to Joseph Brazeau. This demand was made by Picot as a representative of Joseph Brazeau.

Under these circumstances, how does the Marine Railway Company, or its agent, Magwire, claim to be the exclusive representative of Brazeau? Is not Picot a representative of Brazeau, having a prior right to Magwire? Can Magwire as agent, claiming as agent of the Marine Railway Company, have rights superior to those who claim by a prior title from that company? Can Magwire insist that, as representative of Brazeau, he is entitled to the land north of the ditch, and thus exclude those who are prior in right to him, claiming to be the same representatives? Magwire only claims the land north of the ditch. Now, if Picot, as representative of Brazeau, is entitled to the land by a prior title from the Marine Railway Company, whether it is north or south of the ditch, can there be any equity in the subsequent claim of Magwire? If the government of the United States had a right to locate the four by four, if that location has been made, and a patent issued to Joseph Brazeau or his legal representatives; if Picot, claiming to be the representative of Brazeau, is willing to take the land as located by the United States, on what ground shall Magwire, the agent of the Marine Railway Company, prevent this, after that company has made Picot such representative? The company cannot have land both north and south of the ditch. If it

has placed Picot south, and the government has given him a patent where the company has located him, what right has that company, through its agent the plaintiff, to deny him the benefit of that patent, and by seeking for a location of the land elsewhere, violate its faith and obligations to him?

These doubts and difficulties suggest themselves to my mind in considering this case. I cannot see how the company, nor its agent Magwire, can have any equity in this case whilst there is a prior apropriation of the four by four south of the ditch to its alienee. Picot is not before the court. His claim under the patent has not yet been presented to us. Whether he has any claim under the patent, whether the officers of the government could appropriate the land to the satisfaction of the four by four claim, what has been the effect of recalling the patent, whether that act does divest any right previously vested in him, whether Magwire, by refusing the patent, could affect his rights, are all questions not presented by the record, and nothing will be said in relation to them; but it seems to me will have to be determined before we can ascertain whether there is any equity in Magwire suing for the Marine Railway Company.

If the title to the four by four, located north of the ditch, was in the Marine Railway Company, and if it had previously sold and appropriated that tract south of the ditch, and had afterwards defeated the right of her alienee, I do not see why she would not be compelled to hold such title in trust for those who were wronged.

I must know what the company has done with the land south of the ditch before I can say that there is any equity in Magwire. This is not the former action of ejectment, in which the mere legal title is involved, but it is a bill in chancery, and the equity of the party must appear.

I do not see that the claim of the plaintiff is strengthened by his deed from Hamilton, the administrator of Strother. It appears to me that that deed was uneffectual, as Strother in his lifetime had conveyed away all his interest in the four by four tract.

When this case was here before I expressed the opinion, founded on a fact which I supposed I was warranted in assuming by the consent of the plaintiff's counsel, that there was no equity in the bill, was I in error in supposing that I was warranted in making that assumption? yet the case as now presented furnishes ground, as I conceive, for the same opinion. As the case has been tried again since then, and as the same difficulty existed in the way of a recovery on the part of the plaintiff, and he did not see proper to obviate it, but insisted on his equity as his bill was framed, I am in favor of an affirmance of the judgment, believing that, under the circumstances, it would be unwarrantable to keep the defendants longer before the court.

The judgment must be affirmed in my opinion. The other judges concur in affirming the judgment.

WILLIAM SCOTT.

Afterwards, to wit, on the 29th day of June, A. D. 1860, said appellant appeared in court, and filed a bond in this cause, in words and figures as follows:

Bond.

Know all men by these presents, that we, John Magwire, and Jules Valle, and Robert M. Renick, are held and firmly bound unto Mary L. Tyler, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fanny J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshal Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M. his wife, Susan P. Christy, George W. Good and Frances S. M. his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A. his wife, William F. Wright, Thomas F. Wright, William H. Glasgow and Mary H. his wife, Theodore P. Green and Willliam A. Wright (trustees of Mary H. Glasgow), Martha A. Wills, Thomas A. Wright and John C. Wickham (trustees of Martha A. Wills), Alfred Dryden and Margaret his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana Schamburgh, George Case, George T. Hardcastle and Adelaide his wife, in the full sum of five hundred dollars, to be paid to the said Mary L. Tyler and other defendants, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 29th day of June, in the year of our Lord one thousand eight hundred and sixty.

Whereas, lately at the March term, 1860, of the Supreme Court of the State of Missouri, in a suit depending in said court between John Magwire, appellant, and Mary L. Tyler and others, appellee, judgment was rendered against the said John Magwire, and the said John Magwire having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary L. Tyler and others, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such, that if the said

John Magwire shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

JOHN MAGWIRE. [SEAL.]
JULES VALLE. [SEAL.]
ROBT. M. RENICK. [SEAL.]

Which said bond is indorsed as follows:

The within bond approved by William Scott, presiding judge of the Supreme Court within and for the State of Missouri, this 29th day of June, A. D. 1860.

WILLIAM SCOTT.

The State of Missouri, *ss.*

I, William S. Glanville, clerk of the Supreme Court within and for the State of Missouri, held at St. Louis, certify the foregoing to be a full, true, and complete transcript of the record and proceedings of said Supreme Court in the case of John Magwire, appellant, against Mary L. Tyler and others, appealed from the St. Louis Land Court.

In witness whereof I hereunto set my hand and the seal [SEAL.] of said Supreme Court, at office in St. Louis, this 18th day of July, A. D. 1860.

WM. S. GLANVILLE,
Clerk.

Costs on appeal to Supreme Court of Missouri.

Wm. S. Glanville, clerk, . . .	$19 80	
F. Jones, marshal Supreme Court, . .	30	
John Magwire, transcript, . . .	212 40	
		$232 50

Costs on appeal to U. S. Supreme Court.

Wm. S. Glanville, clerk, transcript, . . .	$215 00

Survey No. 3342.

Plat and description of the survey of a tract of land of seventy-nine acres and sixteen hundredths of an acre, situate in township forty-five north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed in the month of May, eighteen hundred and fifty-nine, by William H. Cozens, deputy surveyor, under instructions from John Loughborough, surveyor-general for Illinois and Missouri, dated the sixteenth of May, eighteen hundred and fifty-nine. This being the tract of four by

twenty arpents granted to Esther, a free mulatto woman, on the fifth of October, seventeen hundred and ninety-three, by Zenon Trudeau, lieutenant-governor of the Spanish province of Upper Louisiana, and confirmed to said Esther, free mulatto woman, or to her legal representatives, by the act of Congress of the fourth of July, eighteen hundred and thirty-six, entitled "An act confirming claims to land in the State of Missouri, and for other purposes," according to the decision, numbered seventy, of the board of commissioners appointed under the act of Congress of the ninth July, eighteen hundred and thirty-two, entitled "An act for the final adjustment of private land claims in Missouri," and the act of Congress of the second of March, eighteen hundred and thirty-three, supplemental thereto. From this survey, however, are excluded such parts as are interfering with other tracts confirmed by the laws of the United States prior to the fourth July, eighteen hundred and thirty-six. See statement of those interferences at the end of this plat and description.

(For plat, see original, page 323.)

Description.

Beginning at a stone fourteen inches long, eight inches wide, five inches thick, marked with a cross on the top, set in the southern boundary of Louis Labeaume's survey, numbered three thousand three hundred and thirty-three, the northwest corner of this survey and of Joseph Brazeau's survey, numbered three thousand three hundred and thirty-two.

Thence north seventy-four degrees and thirty minutes east, with the southern boundary of the Louis Labeaume survey and the north boundary of the Joseph Brazeau survey, at seventy-six and two-thirds links, a stone twelve inches long, nine inches wide, four inches thick, with the edges north and south, at the intersection with the eastern boundary of the survey numbered one thousand four hundred and ten, in the name of Gabriel Dodier's representatives, and at eleven chains and seventy-six and two-thirds links, a stone, on the right bank of the Mississippi river, the southeast corner of the Louis Labeaume survey, and the northeast corner of this and of the Joseph Brazeau surveys.

Thence down and along the right bank of the Mississippi river (at high water mark), south twenty-three degrees east, eleven chains and sixty-six and two-thirds links, to a stone; thence south eight degrees and fifty minutes east, six chains and forty links; thence south fourteen degrees and thirty minutes east, nine chains and eighty-seven links; thence south eleven degrees and thirty minutes east, eighteen chains and ten links; thence south four degrees and fifteen minutes west, nine chains and sixty-two links, to a point in the south boundary of Peter Chouteau's survey, numbered six hundred and

seventy-one, which is also the north boundary of Antoine Roy's survey, numbered one hundred and eighty-one; thence south eleven degrees and thirty-five minutes east, three chains and thirty-six and one-third links, to a stone, the southeast corner of this survey.

Thence south seventy-four degrees and thirty minutes west, eleven chains and sixty-six and two-thirds links, a point in the pavement of Second street, in the city of St. Louis, the southwest corner of this survey, from which the southeast corner of a house at the northwest corner of Biddle and Second streets bears south twenty-one degrees and three minutes west, forty-one feet and eight and a half inches distant, and the southwest corner of a brick house at the northeast corner of Second and Biddle streets bears south forty degrees and fifty-eight minutes east, fifty-four feet and one and a half inches distant.

Thence north eleven degrees and thirty-five minutes west, at three chains and thirty-six and one-third links, a stone in the south boundary of the Peter Chouteau survey, the northwest corner of the Antoine Roy survey, and the most northern corner of survey numbered one thousand four hundred and sixteen, in the name of John Mullanphy, under H. Eglize; at forty-seven chains and seventy-six and one-third links, a stone seventeen inches long, ten inches wide, three inches thick, set at the intersection with the north boundary of the Peter Chouteau survey and the south boundary of a school land, designated as survey numbered three hundred and ninety-one (of a series for Saint Louis lands), from which the most eastern corner of said school land bears north seventy-four degrees and thirty minutes east, two chains and twenty and a half links distant; at fifty-four chains and twelve and one-third links, a stone, thirteen inches long, eight inches wide, four inches thick, at the intersection with the eastern boundary of survey numbered one thousand four hundred and eighty-four, in the name of Paul G. Kiercerau, and the western boundary of said school land, from which the most northern corner of said school land bears north one degree and thirty minutes west, two chains and three links distant; and at fifty-eight chains and thirty-three and one-third links, the beginning corner.

Statement of the interferences of Survey No. 3342, with other surveys, confirmed prior to the 4th July, 1836.

No. of Surveys.	Names of the Confirmees.	Date of Confirmation.	Arens of the interferences. Acres.	Remarks.
181	Antoine Roy.	Feb. 17, 1809.	3.90	Confirmed by the Board of Commissioners, under the Act of Congress, of the 2d March, 1805.
671	Peter Chouteau.	May 29, 1811.	61.32	
3332	Joseph Brazeau.	June 14, 1811.	12.73	This interference includes that part of Survey No. 3332, which lies north of survey No. 673, and east of the St. Louis common field.
1410	Gabriel Dodier's represent's.	Act of Congress of the April 29, 1816.	0.16	
1484	Paul G. Kiercereau			
		Total,	78.11	

In all, seventy-eight acres and eleven hundredths of an acre, for which a certificate of new location, numbered two hundred and thirty-one, is issued this day, the thirty-first of May, eighteen hundred and fifty-nine, in conformity with the provisions of the said act of Congress, of the fourth of July, eighteen hundred and thirty-six.

NOTE.—The remaining part of Survey, numbered three thousand three hundred and forty-two, containing one acre and five hundredths of an acre, is covered by survey, numbered three hundred and ninety-one (of a series for Saint Louis lands), which was, on the twenty-fifth of July, eighteen hundred and fifty-five, assigned and set apart by the surveyor-general, to the city of Saint Louis, for the support of schools.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI,
ST. LOUIS, May 31st, 1859.

The foregoing plat and description of survey numbered three thousand three hundred and forty-two, are this day approved as recorded on pages three hundred and thirty-five, three hundred and thirty-six, and three hundred and thirty-seven, of this book.

JNO. LOUGHBOROUGH,
Surveyor-General.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI,
SAINT LOUIS, June 1st, 1859.

The foregoing plat and description of survey No. 3342, together with the certificate of approval thereof are correctly copied from pages 335, 336 and 337, of Record Book F., on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

United States of America, *ss.*

The President of the United States, to the Honorable, the Judges of the Supreme Court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you at the March term, 1860, between John Maguire, appellant, and Mary L. Tyler, Wm. C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Robata Tyler, James Guthrie, Wm. Chambers, Louis A. Labeaums, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benj. F. Jennings, Joseph Cochran, Thomas I. Beirne, Wm. L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, Susan P. Christy, George W. Good, and Frances S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Green and William H. Wright, trustees of Mary N. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakeman, James R. Lackland, Orleana Shamburgh, George Case, George Hardcastle and Adelaide his wife, appellees, a manifest error hath happened to the great damage of the said John Magwire, appellant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty.

Issued at office in the city of St. Louis, with the seal of the Circuit Court of the United States, for the District of Missouri, dated as aforesaid.

[SEAL.] BEN. F. STICKMAN,
Cl'k. C. C. U. S. Mo. Dis.

Allowed by William Scott, presiding judge of the Supreme court within and for the State of Missouri, this 29th day of June, 1860.

WILLIAM SCOTT.

The State of Missouri, *ss.*

I, William S. Glanville, clerk of the Supreme Court, within and for said State of Missouri, in obedience to the within writ, do herewith forward to the Supreme Court of the United States at Washington, a full, true, and complete transcript of the record and proceedings of said Supreme Court of Missouri, in the case of John Magwire, appellant, against Mary L. Tyler and others aforesaid, respondents, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of
[SEAL.] said Supreme Court, at office in Saint Louis, this eighteenth day of July, A. D. 1860.

WM. S. GLANVILLE,
Clerk.

CITY OF NEWPORT,
v.
AIR & WALLS.

} Record and Opinion of Court of Appeals of Kentucky.

SUSTAINING TAYLOR'S EXCLUSIVE FERRY RIGHTS.

October Term, 1838.

PLEAS

BEFORE THE

Hon. SAM'L M. MOORE,

Judge of the Campbell Circuit Court, at the Court House in the City of Newport, on the 22d day of August, 1857.

ROBERT AIR AND JAMES WALL, *Appellants*,
v. } *Appeal from Mayor's Docket.*
THE PRESIDENT AND COMMON COUNCIL OF THE CITY OF NEWPORT, *Appellees.*

Be it remembered, that heretofore, to-wit: on the 23d of May, 1857, the appellants filed with the Clerk of this Court the following transcript, to-wit:

TRANSCRIPT.

THE PRESIDENT AND COMMON COUNCIL OF THE CITY OF NEWPORT, *Plaintiffs*,
v.
ROBERT AIR AND JAMES WALL, *Defendants.*

Warrant for $6.25, debt due for wharfage, upon an account as filed, issued to City Marshal, returned executed on the parties, and trial set for May 5, 1857.

May 5, 1857.—This cause being called for trial, the parties being present and the evidence heard, judgment is rendered for the plaintiffs against the defendants for the sum of $6.25, with interest thereon from this date and until paid; also, for his costs herein. Mayor's fees, 90 cents. Marshal's fees, 65 cents.

GEO. R. FEARONS, *Mayor.*

I certify that the foregoing is a true transcript in the above cause, as it appears upon the docket of the Mayor of Newport. Given under my hand, this 19th day of May, 1857. GEO. R. FEARONS, *Mayor.*

Transcript fees, 50 cents.

And executed an appeal bond as follows, viz:

APPEAL BOND.

CAMPBELL CIRCUIT COURT.

AIR AND WALL, *Appellants,*
v. } *Appeal Bond.*
THE CITY OF NEWPORT, *Appellee.*

R. Air and J. Wall, having prayed an appeal to the Campbell Circuit Court from the judgment of Geo. R. Fearons, Mayor of Newport; now, we covenant that they will satisfy and perform the judgment that shall be rendered upon the appeal.

Witness our hands this 19th of May, 1857.

ROBERT AIR,
A. S. BERRY.

Attest: GUS. ARTSMAN, *Clerk.*

SUMMONS, ETC.

CAMPBELL CIRCUIT COURT.

AIR & WALL, *Appellants,*
v.
THE CITY OF NEWPORT, *Appellee.*

The Commonwealth of Kentucky to the Sheriff of Campbell County.

You are commanded to summon the President and Common Council of the City of Newport, to appear in the Campbell Circuit Court, on the 1st day of its next August term, to answer the appeal taken by Robert Air and James

Wall, from a judgment rendered by the Mayor of Newport, in the action wherein said President, etc., were plaintiffs, and the said Air and Wall were defendants.

Witness, Gus. Artsman, Clerk of said Court, this 23d day of May, 1857. GUS. ARTSMAN, *Clerk.*

RETURN, VIZ:

Executed on Robert McCracken, June 17, 1857, by delivering him a true copy of the same.

H. D. HELM, *Secretary,*
By M. COOK, *D'p'ty.*

SUPERSEDEAS, VIZ:

Campbell Circuit Court to Geo. R. Fearons, Mayor of Newport.

R. Air and James Wall, having taken an appeal to this Court from a judgment rendered by you on the 5th day of May, 1857, in the action, The President, etc., of Newport, plaintiffs, against the said R. Air and J. Wall, defendants—You are, therefore, ordered to stay all proceedings upon said judgment, and to transmit to the Clerk's office of this Court all the original papers in said action, within ten days. Given under my hand, this 23d day of May, 1857. GUS. ARTSMAN, *Clerk.*

RETURN, VIZ:

Executed this supersedeas on Geo. R. Fearons, Mayor of the City of Newport, Ky., May 23d, 1857, by delivering him a true copy of the same.

H. D. HELM, *S. C. C.*

The original papers filed by the Mayor, are the warrant and account, viz:

WARRANT.

The Commonwealth of Kentucky, City of Newport, to the Marshal of the City of Newport:

You are commanded to summon Robert Air and James Wall to appear before me, George R. Fearons, Mayor of the City of Newport, to answer the complaint of the President and Common Council of the City of Newport, for the non-payment of ($6.25,) six dollars and twenty-five cents, debt due for wharfage (as per account filed), and of this writ make legal service, and due return. Given under my hand this 30th day of April, 1857.

GEORGE R. FEARONS, *Mayor.*

Executed April 31, 1857, and set for trial May 5, 1857, at 2 o'clock P. M.

M. COOK, *Marshal C. N.*

ACCOUNT, VIZ:

NEWPORT, KY., April 29, 1857.

ROBERT AIR & JAMES WALL,

To the President and Common Council of the City of Newport. *Dr.*

To wharfage on one coal barge, between 15th and 25th of April, 1857. - - - - $6.25

At a Circuit Court, held for Campbell County, on the 19th August, 1857.

The parties having agreed upon the facts, filed a statement thereof, and by consent, the law and facts were submitted to the Court.

The following is the statment of facts agreed upon:

FACTS.

It is agreed by the parties that the following constitute the facts in this case. The City of Newport owns the

wharf in front of the esplanade on the Ohio river, and has the right to charge wharfage on all boats or watercrafts landing thereat, except such as are specially exempt by law, or by the terms of the dedication, and has passed an ordinance for the collection of wharfage. The defendants are the lessees of the Ferry Privilege, belonging to the heirs of General James Taylor, across the Ohio river, from the said esplanade, and they run steam ferry-boats at said ferry, according to the order of the Campbell County Court, which boats require fuel for their navigation. The ferry-boats usually land at the foot of York street, though in low water, and at other times, when the landing at the foot of York street is unsafe or impossible, they land at other parts of the esplanade, where they can effect a landing; the barge on which the wharfage was charged, and which is claimed in this action, was loaded with fuel for the ferry-boat, and was landed at the foot of Monmouth street, one square above the usual ferry landing, but upon the esplanade, and remained there no longer than was necessary to discharge the cargo of fuel, which was used exclusively for the use of the ferry-boats. The ferry-boat occupies all of the foot of York street, in making its regular landings. There is no improved wharf between York and Monmouth streets, the proprietors of the ferry have improved and kept in repair the wharf at the foot of York street, but at no other part of the esplanade. The rates of wharfage, charged in this case, and the time at which it is alleged the barge lay at the wharf are correct.

DE COURCY & HAWKINS, *for City.*
HALLAM & HODGE, *for Dfts.*

On the 22d day of August, 1857, this day the Court rendered the following judgment, to-wit:

By the decision of the Court of Appeals the appellants have the exclusive ferry privileges, and also "the incidents thereto;" and the appellee has the right to erect wharfs, and charge wharfage.

The respective rights of the parties herein are not unlike those of the parties in the case of Kennedy, in the City of Covington. 17 B. Monroe. In that case it is decided that the City of Covington can not charge the owners of the ferry franchise with wharfage, but the city may require them to contribute to the construction and repairs of the wharf, althougth nothing in that opinion is said about the incidents to the ferry franchise, yet, the reasoning of the case would authorize the conclusion that the proprietors of the ferry would be required to contribute to the erection and repairs of as much of the wharf, or landing, as may not only be sufficient for a boat landing, but also for such incidental purposes as may be required in running their boats. The boats are propelled by steam, and they can not be run without fuel; they must have the right to procure the fuel. The procuring fuel is an incident to the ferry. In this case the appellants have made a landing at their own expense, and therefore could not be required to pay the city for the same. They have the right to land their boats and fuel, to be used only in their boats, free of wharfage. But they have no right to use any more of the landing in that way than may be sufficient to enable them to conduct the ferry properly. Wherefore it is adjudged that the action of appellees be dismissed, and that appellants recover of them their costs herein, and they may have execution.

Came the plaintiff and moved the court for a new trial on the ground that the judgment is against the law and evidence, which motion of plaintiff was overruled, and the

plaintiff excepts; and on further motion of plaintiff an appeal is granted then to the Court of Appeals from the judgment herein, and by consent of parties, the statement of the facts on file in this court are agreed to be the facts for the Court of Appeals, and all the evidence in the case.

STATE OF KENTUCKY,
CAMPBELL CIRCUIT COURT.

I, Gustavus Artsman, Clerk of the Associated Court, do certify that the preceding 8½ pages contain a full, true and complete transcript of the record and proceedings in the case therein mentioned.

Given under my hand this 1st day of Nov., 1857.

GUS. ARTSMAN, *Clerk C. C. C.*

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And afterwards, to-wit, at a Court of Appeals begun and held at the Capitol in Frankfort, on the 2d day of October, 1858:

CITY OF NEWPORT, *Appellant*,
v.
AIR & WALL, *Appellees*.
Appeal from the Campbell Circuit Court.

This cause came on and was heard, but the court not being sufficiently advised, took time, etc.

Afterwards, to-wit, on the 13th day of October, 1858, rendered the following judgment:

CITY OF NEWPORT, *Appellant*, } *Appeal from the*
v. } *Campbell Circuit Court.*
AIR & WALL, *Appellees.* }

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further ordered that appellees recover against appellant their costs herein expended.

I hereby certify appellees' cost to be nine ($9.65) dollars and sixty-five cents.

The following is the opinion of the court rendered herein, viz:

OPINION OF COURT OF APPEALS.

THE STATE OF KENTUCKY, }
COURT OF APPEALS, *October* 13, 1858. }

CITY OF NEWPORT, *Appellant*, } *Appeal from*
v. } *Campbell Circuit Court.*
AIR & WALL, *Appellees.* }

The court being sufficiently advised, delivered the following opinion, to-wit:

The facts, out of which the controversy between the parties to this action arises, are presented by the agreed case, and made part of the record.

This controversy relates to, and in some degree affects the ferry franchise from the City of Newport across the Ohio river to the opposite shore, now owned and held by the representatives of Gen. James Taylor. It is needless at this time to go into any inquiry about the origin of this franchise, or into an extended discussion and investi-

gation of its nature and extent. That would be a work of supererrogation. In three several cases has the right of James Taylor and his representatives to the exclusive ferry franchise been recognised and established by this court, and the nature, origin and extent of the privilege been discussed and ascertained with minuteness and accuracy. *Trustees of Newport* v. *Taylor*, 6 J.J.M. 134; *Taylor's heirs* v. *Newport*, 11 Ben. Mon. 361; *Newport* v. *Taylor's ex'r*, 16 Ben. Mon. 767.

In the case last cited (16 Ben. Mon. 767), the relative rights of the parties, growing out of the ownership of the ferry by one, and the interest in the esplanade fronting on the river held by the other, were elaborately discussed and accurately defined. It must be considered as settled by these repeated adjudications upon the rights and conflicting claims of the parties, that the exclusive right of a ferry from the shore of the Ohio in front of the City of Newport is vested in Taylor's representatives, and that they possessed all rights incident to the franchise, or necessary to sustain it. That the City of Newport possesses no right or use in the open space between the city and the river, which is incompatible with the reservation by Taylor of the ferry right. That the city has no right or use in the open space of ground aforesaid, nor in the wharf in front of the city, which is inconsistent with the rights of Taylor's representatives to the ferry. That in using their ferry privileges the owners thereof have the right to land their boats at any convenient part of the wharf. That the right of the city in the wharf is not superior, but rather subordinate to the ferry right. But that neither party can lawfully so use their rights and privileges as seriously to interfere with the convenient use by the adverse party of their own rights.

The question now occurs, Had the city the right and power, in view of all the rights of both parties, as they have been settled, to compel the appellees to pay wharfage upon the coal barge which was landed at the wharf at the time, in the manner, and for the purpose stated in the agreement of facts which is made part of the record? It appears that the appellees are the lessees of the ferry privileges, belonging to the heirs of Gen. James Taylor, across the Ohio river from the esplanade in front of the city; that they run steam ferry-boats at said ferry according to the order of the Campbell County Court, and that the ferry-boats need fuel for their propulsion. That the barge, on which the wharfage was charged, was loaded with fuel for the use of the ferry-boats, and was landed at the foot of Monmouth street, one square above the usual ferry landing, but upon the esplanade, and remained there no longer than was necessary to discharge the cargo of fuel, which was used exclusively by the ferry-boats. The ferry-boats usually land at the foot of York street, and when so landing occupy the entire front of that street; but at times when the landing at that point is impossible or unsafe, they land at other points.

The city claims the right to charge wharfage upon this barge, and is seeking in this action to compel appellees to pay the sum charged. This is the first time in the history of this protracted controversy, that the right to charge wharfage upon the ferry-boats or any of their tenders or appendages, has been asserted by the city. It seems to us that the right now asserted is inconsistent with the rights appertaining to the ferry franchise, which have been established in the present holders of that franchise, and those under whom they claim by reservation, by legisla-

tive enactment, by lapse of time, by long continued and uninterrupted use, and by repeated judicial decisions.

We have seen above that the owners of the ferry possess all the rights incident to the franchise, and all the rights necessary to sustain it.

Is not the right to land a barge at the wharf for the single purpose of supplying fuel to the ferry-boats an incident to the ferry franchise—a right necessary to sustain the main right or franchise? We think it is.

The grant to its owners of this ferry privilege involves public duties. The grant was not for individual advantage alone, but for the public accommodation. The grant is affected with a *jus publicum.*

Not only have the local public of the City of Newport an interest in the proper discharge, by the owners of the ferry, of their duties, but the general public have an interest.

The owners of the ferry are obliged to provide and maintain ample facilities for accommodating the public, at all times, with prompt and convenient passage. For the discharge of these public duties, it is found necessary to provide and maintain at this ferry at least two good boats propelled by steam. To generate steam, fuel is required. It is absolutely necessary then, in order to sustain the ferry, that the owners shall be at liberty to use the wharf to some extent in providing the fuel required for the propulsion of their boats.

It seems to us further, that the right to use the wharf for this purpose involves the right of selection or choice by the owners of the ferry, of the particular mode in which they will procure their supplies of fuel. They must be allowed a discretion—an option—being careful, however, that there is no abuse of that discretion.

To say that the owners of the ferry may use the wharf, in procuring supplies of fuel for their boats, and then to allow the city to prescribe the particular mode in which the shape of tolls or wharfage, is to render valueless the liberty, which we have said the owners possess.

If this right of regulating the mode in which the proprietors of the ferry shall use the wharf, for the indispensable purpose of supplying fuel to the boats, and of taxing such use, is allowed to the City of Newport, it may in time come to be so used as to render altogether valueless the ferry. The ferry franchise may be utterly destroyed by the use which the city is thus allowed to make of her franchise of a wharf.

It seems to the Court, that it can not be denied that the right to use the wharf, at any part of which the ferry-boats have the right to touch in the course of their business, in some lawful and reasonable mode, for the supply of fuel at the boats, naturally pertain to, and is an incident of, the ferry privilege. And the right to choose the mode of supply, is but part and parcel of the other right, and necessarily involved in it. If it were not so, it would be in the power of the city to impose upon the ferry such restrictions and burdens as could not be borne.

It is admitted that fuel is necessary for the propulsion of the boats, and that some mode of supply is to be adopted. The question then occurs, Who is to choose the mode? The natural and only proper answer is, the party, whose interest and duty it is to procure the fuel, must be allowed to adopt the mode of his own choice, with this limitation, however, that the mode adopted must not interfere with the convenient use of the wharf by the public.

The landing of the coal barge, for the purpose, in the manner, and for the time described in the agreement of

facts contained in the record, was such use of the wharf, as, in our opinion, the proprietors of the ferry, or their lessees, had a clear right to make.

Under the authority of *Kennedy* v. *Covington City*, 17 Ben Mon., we decide that the City of Newport had no right to charge wharfage upon the ferry-boats of Taylor's heirs, or their lessees, landing at their wharf in the prosecution of their business, and no right to charge wharfage upon the coal barge for its landing, as set forth and described in the agreement of facts.

The question of the duty or liability of the owners of the ferry, to contribute in keeping the wharf in repair, is not involved in this case.

It is insisted on the part of the city, that the ferry franchise, being a public grant, must be strictly construed, and that nothing passes to it as incident by implication. However applicable this principle may be to a conflict between the holder of a franchise in regard to exclusive rights and individuals, or the rights of private property, it has no application in this case.

This case presents a conflict between the rights appertaining to two franchises, as claimed by the respective holders. The right to take toll at a wharf is but a franchise. Tomlin.'s Law Dictionary, vol. 1, page 836. So far as there is any subordination upon the part of either of these franchises to the other, the wharf franchise must be regarded as subordinate to the ferry franchise, and must be so construed as to give due effect. See the cases above cited: 6 J. J. Mar. 134; 11 B. Mon. 361; 16 B. Mon. 767; 17 B. Mon. 567, etc. Also Kent's Com., 3d vol., page 574.

We find no error in the judgment of the Circuit Court, wherefore the judgment is affirmed.

STATE OF KENTUCKY, } *Sct.*
Court of Appeals Office, }

I, Leslie Combs, Clerk of the Court of Appeals for the State of Kentucky, do hereby certify, that the foregoing twenty pages and upward of written paper contain a full, true and complete transcript of the record and proceeding had in the Court of Appeals, in the case mentioned in the caption—that the same is truly transcribed from the records on file in my office.

In testimony whereof, I have hereunto signed my name as clerk aforesaid, and affixed the seal [SEAL.] of said Court. Done at my office, at the Capitol in Frankfort, this 18th day of January, A. D. 1862.

LESLIE COMBS, *C. C. A.*

STATE OF KENTUCKY, }
Court of Appeals. }

I, Henry J. Stites, Chief Justice of the Court of Appeals of the State of Kentucky, do hereby certify, that Leslie Combs is Clerk of the Court of Appeals for the State of Kentucky, duly elected, commissioned and qualified, and that he was clerk of said Court at the time he signed the above certificate—that his signature to the above certificate is genuine, and that all of his official acts are entitled to full faith and credit as such.

In testimony whereof, I have hereunto signed my name as Chief Justice aforesaid, this 18th day of January, A. D. 1862, and that said certificate is in due form of law.

HENRY J. STITES, *Ch. J. Kentucky.*

N°330 - page 163

This is the paper "Exhibit" or document referred to by the witness Chatfield in his annexed deposition as "Exhibit 1" June 19th 1858.

Jno W. Magiel
U. S. Com. for Dist of Illinois.

No. 330 - page 192.

2

Kankakee River

Momence Mill Company

RESERVED FOR THE

Stone

1/4 cor

Stone

34 4 29/100 Acres 609 ft

33 3 55/100 Acres

Stone 80 150 ft

Stone

1/4 Sec corner

1/4 Sec in Corner for 19

Stone

3 3 92.50 3 95/100 Acres 360 ft

2 5-36/100 Acres 366 ft

1 5-80/100 Acres 360 ft

19 227/100 Acres

20 2 95/100 Acres

21 2 62/100 Acres

24 2 95/100 Acres 360 ft

23 2 27/100 Acres 360 ft

22 2 60/100 Acres 314 ft

609.50 feet

360 feet

360 feet

360 feet

360 feet

360 feet

35 9 22/100 Acres

36 5-45/100 Acres

37 5-45/100 Acres

38 5-45/100 Acres

39 5-45/100 Acres

40 5-45/100 Acres

46 9 28/100 Acres

45 5-45/100 Acres

44 5-45/100 Acres

43 5-45/100 Acres

42 5-45/100 Acres

41 5-45/100 Acres

47 9 34/100 Acres

48 5-45/100 Acres

49 5-45/100 Acres

50 5-45/100 Acres

51 5-45/100 Acres

52 5-45/100 Acres

300.5 feet

58 7 11/100 Acres

57 4 13/100 Acres

305.36 feet

56 18/100 Acres

302.77 feet

55 2 20/100 Acres

310.18 feet

54 4 22/100 Acres

312.59 feet

53 4 24/100 Acres

315 feet

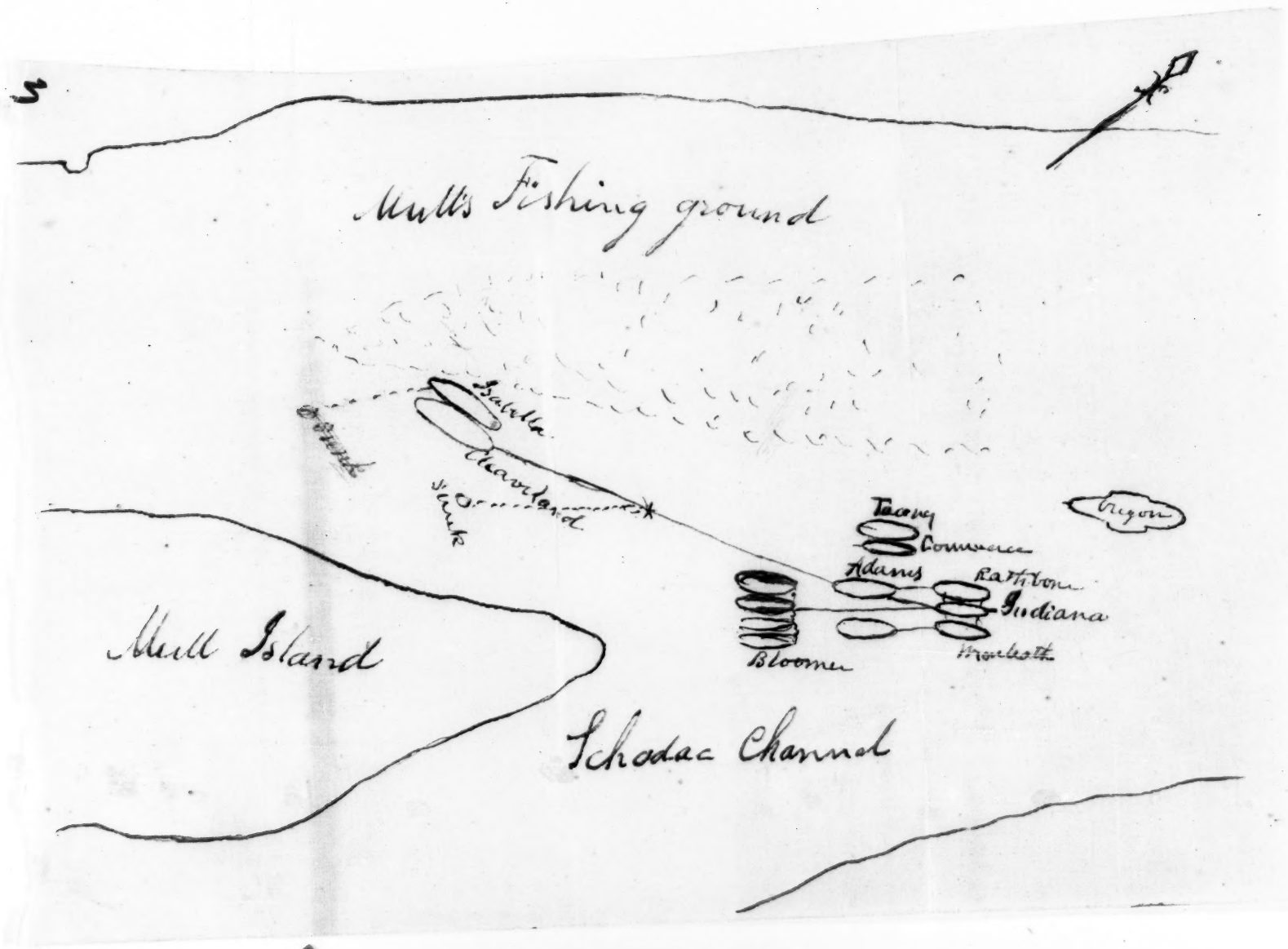
Range Line No 10 West allowing 7° E Magnetic Variations

Stone

Filed for Record on the 11th day of August A. D. 1853. The above Map is drawn on a Scale of 400 feet to an inch

S Gatterson
Recorder

SOUTH ADDITION
TO
MOMENCE


Mulls Fishing ground
Isabella
Channel
Tacony
Commerce
Adams
Rathbone
Indiana
Bloomer
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Mull Island
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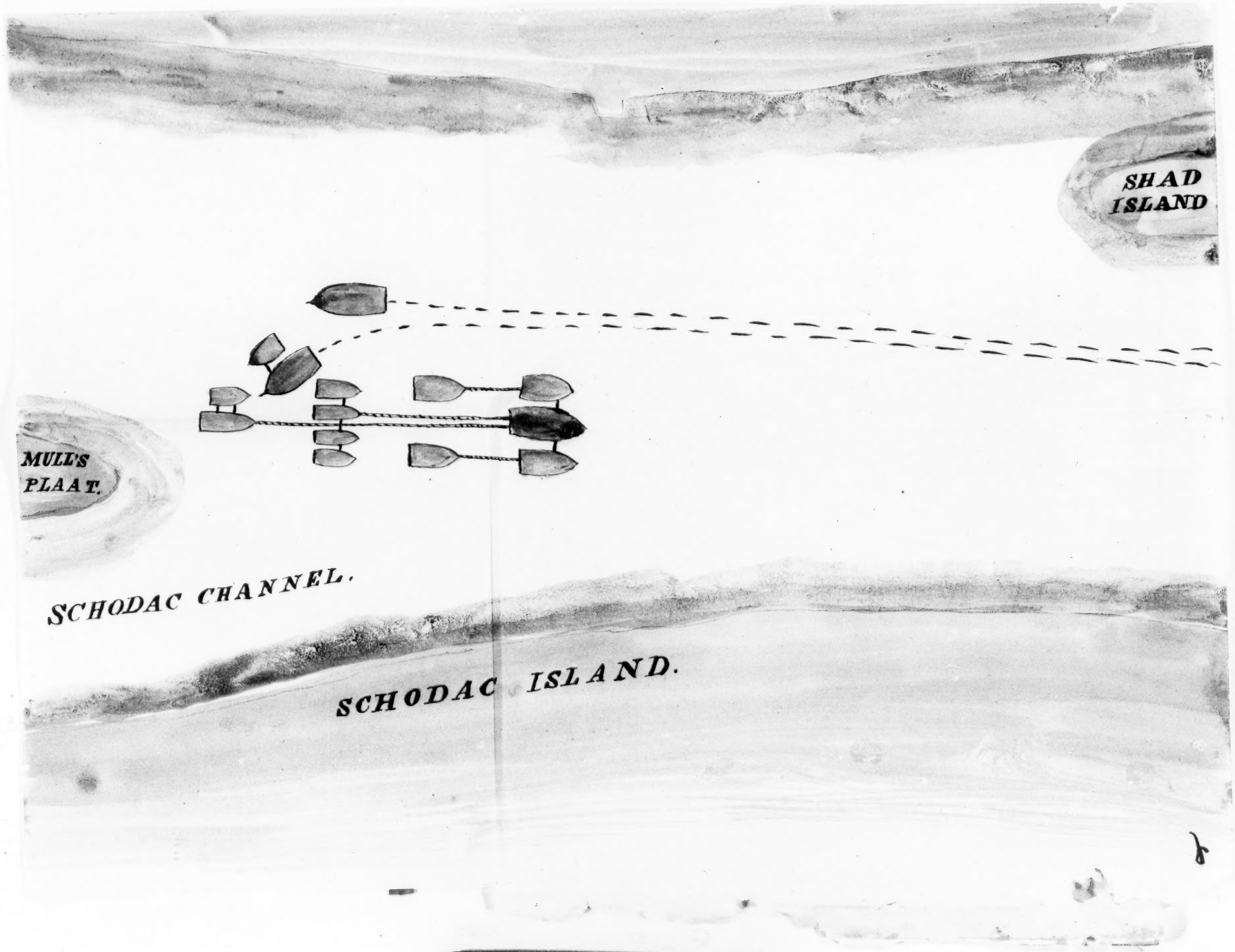
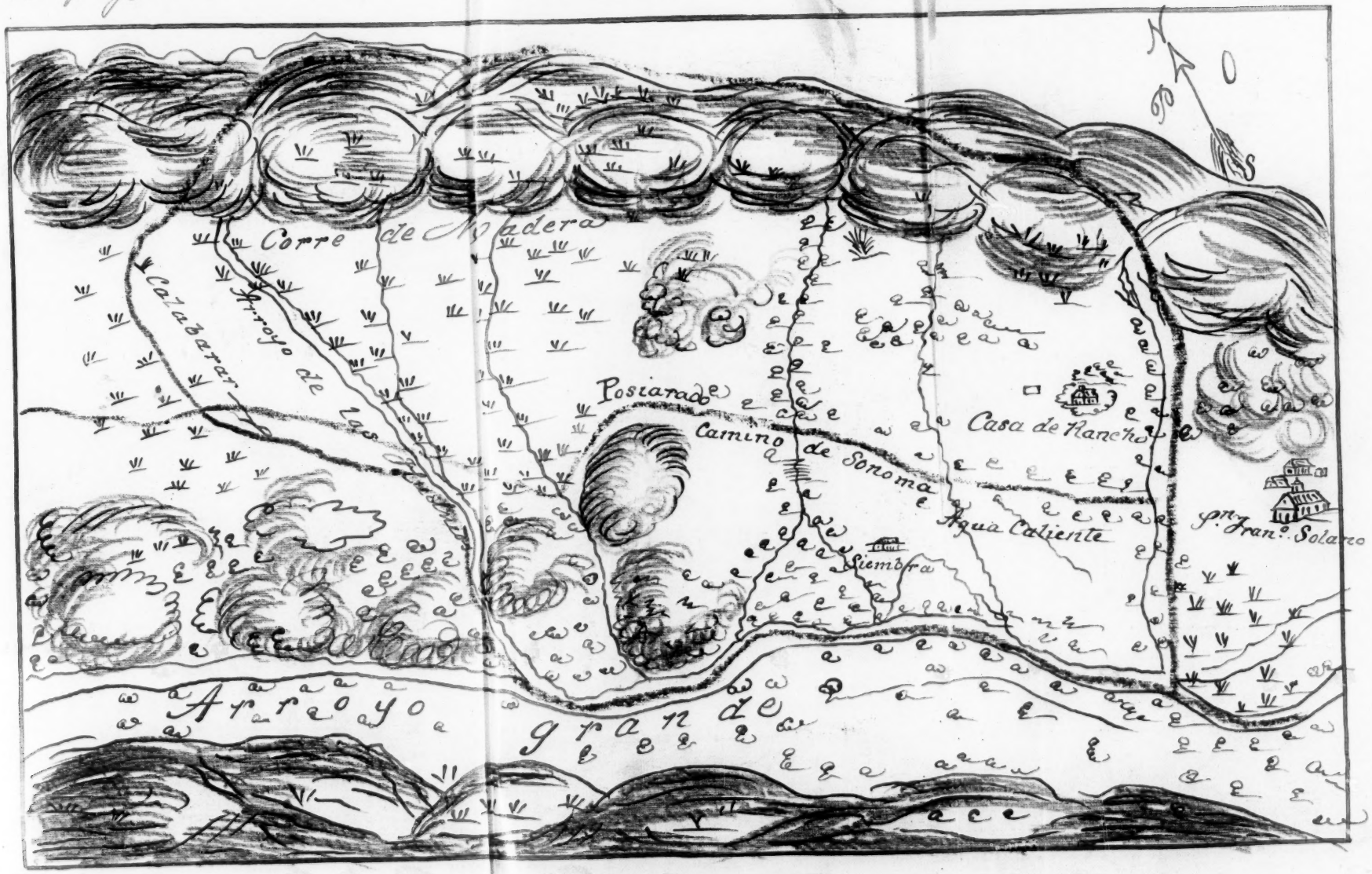

SHAD
ISLAND
MULL'S
PLAAT.
SCHODAC CHANNEL.
SCHODAC ISLAND.

N°346 - page 12


N
O
S
Corre de Madera
Cazabarat
Arroyo de las
Posiarade
Camino de Sonoma
Casa de Rancho
Agua Caliente
Siembra
Sn. Franco. Solano
Arroyo grande

N.W.t. Ottawa to Perry pa: 16

T. 37. N. R. 2 E. the 5th Principal Meridian

No 436
Mons Austin
7133.22 arpens - 6085.29 acres

Lot No 21 in the Village of Morin's Location - Vacant
" " 22 " Confirmed to Robt. Bruggy under Mons Austin
" " 23 " " For Chadbourne under " "
" " 24 " Saml. Perry under Louis Roncour
" " 25 " Mary Baldwin under And. Sovereign
" " 26 " And. Sovereign's Legal Reps.
" " 27 " And. Sovereign " "
" " 28 " Saml. Perry under Sot. Seraphim
" " 29 " J. R. Bratt & Son's Legal Reps.
" " 30 " Saml. Perry under P. Ter Hoorl
" " 31 " Nicholas Bilton's Legal Reps
" " 32 " Saml. & Partenay's Legal Reps.
" " 33 " Vacant
" " 34 " Confirmed to [illegible] Legal Reps
" " 35 " " " Boyd Hamel's Legal Reps
" " 36 " Saml. Perry under Sot. Boisvenue dit Provencher
" " 37 " Wm. Fine Perry under Boyd & Batte
" " 38 " For. Blais [illegible]
" " 39 " Robt. Fowler [illegible] Holley, Esq.
" " 40 " Jno. McCabe's Legal Reps.
" " 41 " Thos. Blakely [illegible] Shattuck
" " 42 " Alex. Beschene's Legal Reps.
" " 43 " Mons Austin's Legal Reps.
" " 44 " Vacant

Sec. 10
Ac 21.74
Ac 42.46
4.30
No 95
No 2044
John Perry & Wm Perry under Boyd Batte 14 arpens = 11-91/100 acres
No 2045
No 3310
David Dunbar and John Jones under
No 2046
No 2041
S. 40° W. 20.41
Ac 39.20
Ac 105.44
Ac 114.16
Sec. 15
Sec. 14
S. 43° E. 20.12
Variation 6° 15' E
Dec. 1874

Exhibit P

The distances on the lines of these lots of the Village of New Carlton that lie south of Morin's Location & Hopkinson's Addition are given in yards - all the other distances on this plat are given in chains.

V

1848 - U. S. to Vallejo assigns - Census 78379

Map of Suscol

Suisun

Suisun Bay

Mare Island

Straits of Carquinas

Benicia

Vallejo

Suscol City

No 198 U. States vs Vallejo - Petaluma No 891

Map
of the
Land of
Petaluma

1/4 1/2 3/4 1
Scale 1 League Square

No. 250

A

Petaluma

Copy of Map

M. G. Vallejo

Filed in Office May 31st 1852

Geo. Fisher

Sec'y.

Exhibit No 1 A F annexed to the Deposition of Genl. Vallejo. Dec. Novem'r 1853

Geo. Fisher

Sec'y

Exhibit No 1

G. F.

Nº 1991 W. J. Wilson del. jul. 18-14

b

Esplicacion

A Lindero con Pedro Maria

B Lomeria de Rocesta

C tierras de regadio y casa

D Mesal del nuevo y lindero de Wilson y Scot

E Aguage del Choxzo

F Sti aguage q.e llega al del Choxzo

G Choxzo

H Arroyo del Choxzo

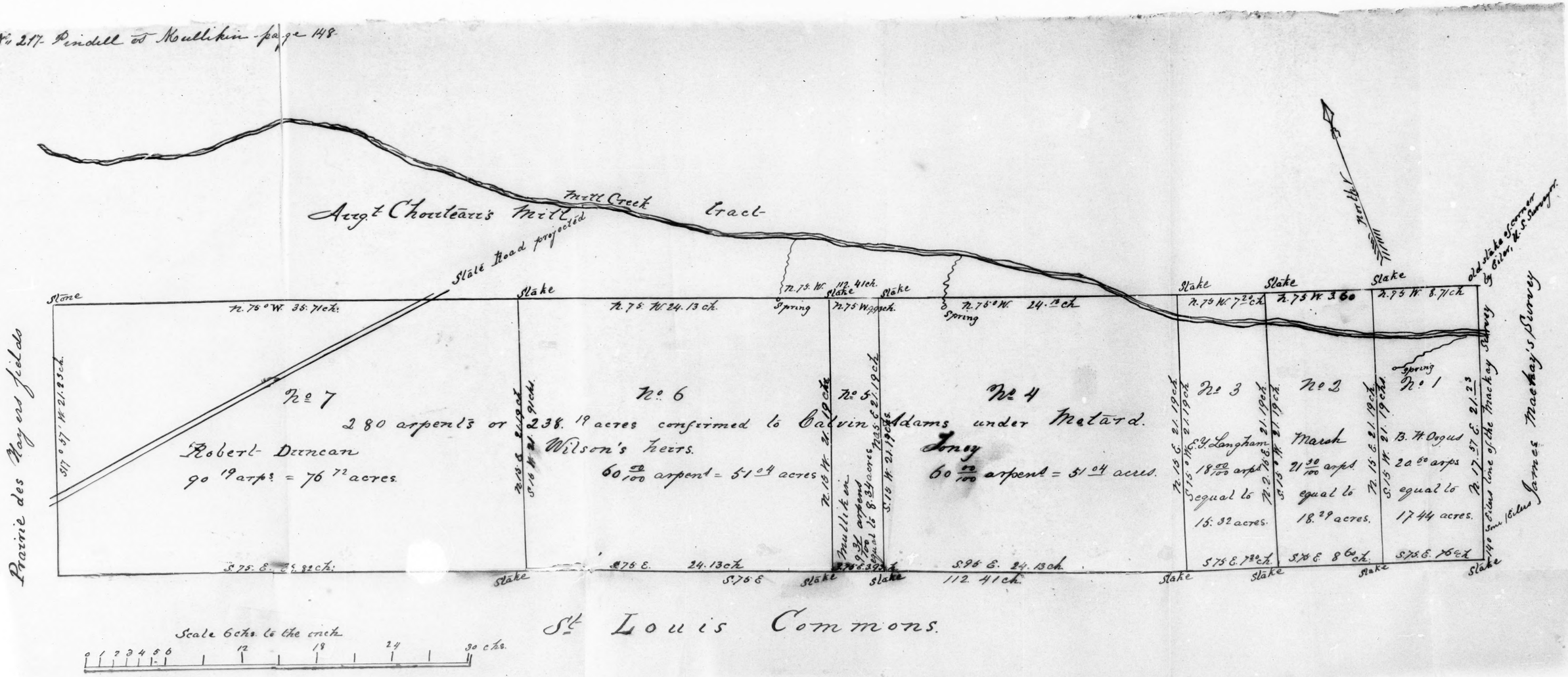
Y Camino real p.a San Luis

10

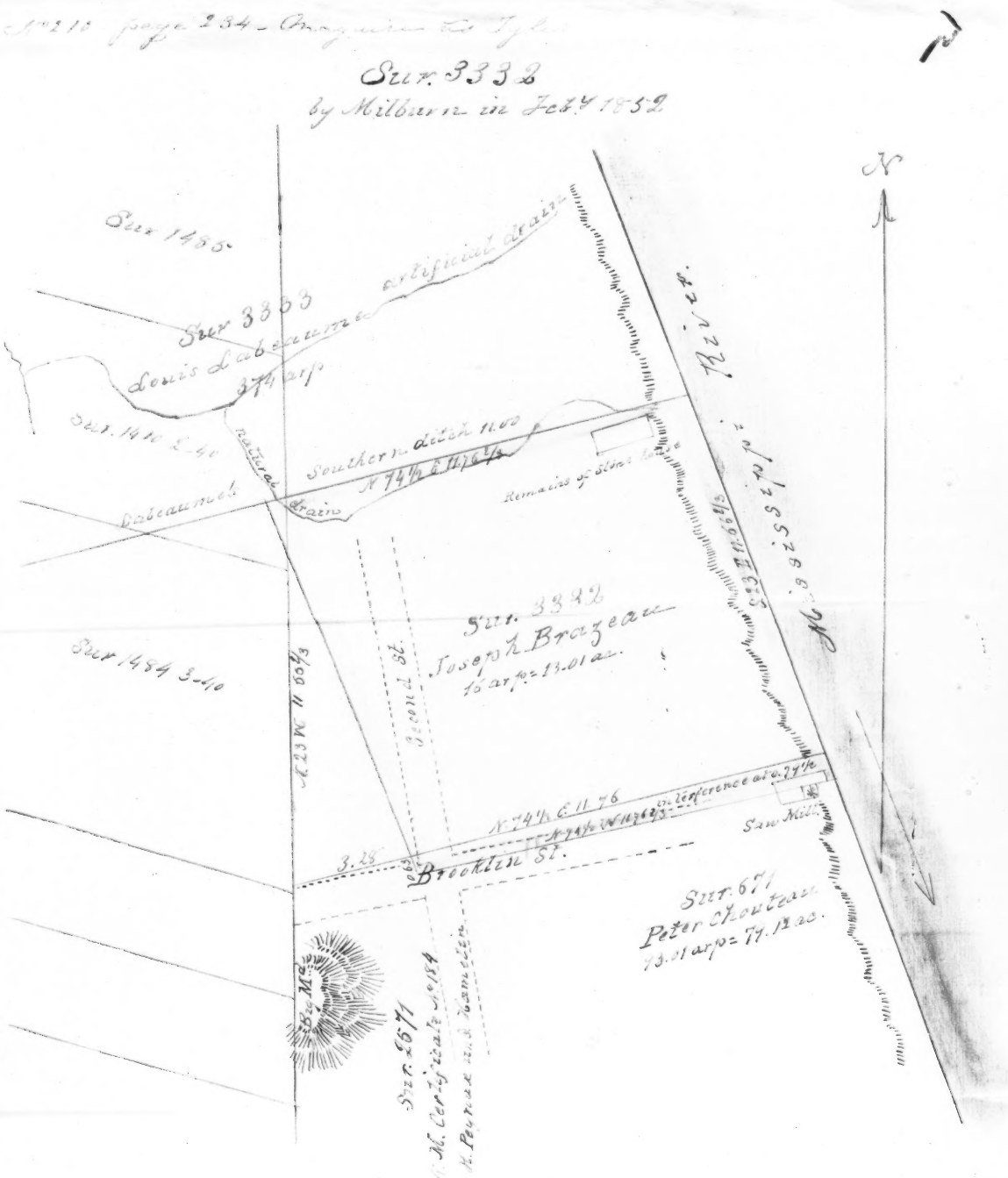
The bearings are by Compass, the distances in Nautic Miles.

NEW BEDFORD
Apponagansett R.
Mattapoisett
Mattapoisett Harbor
Black R. Harbor
Sippican Harbor
Wings Cove
Charlotte Island
Amount Cove
Red Brook Harbor
Catammut Harbor
Wild Harbor
Hezd Harbor
Fairhaven
Acushnet R.
Round Hill
Salters Point
Mosher's
Negro Ledge
Weatherly Rocks
Wilbors Ledge
Rocky Point
Clarks Point
Gulf
Fairhaven Shoal
Cuttyhunk Pond
Cuttyhunk
Gosnold
Penikese
Penikese I.
Penikese Shoal
Pasque
Pasque I.
Robinsons Hole
Nashawena
Nashawena I.
Quicks Hole
Sow & Pigs
Light Ship
Vineyard Sound
Middle Ground
Falmouth
Canapasset R.
Canapasset Pt.
Long Pt.
Wood's Hole
Woods Hole Harbor
Eel Pond
Lagoon Pond
Majors Cove
Sauquoit acket Point
Trapps Pond
Eel Point
EDGARTOWN
Chappaquiddick
Poppasquash Pt.
Poppasquash
Herring Fence
L'Homme Dieu Shoal
Horse Shoe Shoal
Dry Spot
Slue
Middle Ground
Middle Channel
Bishops & Clerks
Light Ship
Centreville
Osterville
Marstons Mills
Hyannis Port
HYANNIS
Hyannis Harbor
Lewis Bay
Dog Fish Bar
Garrett
Callier Ledge
Gallaghers
North Bass
West Channel
Middle Ground
Bishops & Clerks
Light Ship
South Yarmouth
Bass River
Bass River Beach
Yarmouth
Bell Buoy
Kill Pond Bar
Harwich
Harwich Harbor
Stage Harbor
Chatham Bar's Bay
Common Flats
Dry at L.W.
CHATHAM
Old Harbor
Schooner Bar
Broken Bottom or Pollock Rip
Pollock Rip
Light Ship
Handkerchief
Butlers Hole
Broken Ripps
Great Round Shoal
Pleasant Bay
New Harbor
Orleans
Harbor
Chatham Beach
Tuckernuck Shoal
Shovelfull
Hawes Shoal
Muskeget Channel
Muskeget I.
Gravelly Pt.
Old Inlet
Smiths Point
Tuckernuck I.
Tuckernuck Bank
New Inlet
Mutton Shoal
Nantucket
Brant Pt.
Whale Back
Bell Boat
Bars
Coatue Pt.
Coatue
Sankaty Hd.
Siasconset
Tom Nevers Head
Weedweeder Shoal
Old Man's Shoal
Shoals
10 ft Shoal
Point Rip
Point
Gibbs Hill
Shoal
Shoal Rk
New Shoal
Green
Jans Hd.
Pilot Boat
Fishing Rip
Old South Shoal
Nantucket
Vineyard
Martha's
Nashawena
Pasque
Penikese
Gosnold
Cuttyhunk
Naushon
Island
Elizabeth Islands
Middle Ground
Channel
Old Man's
Quick's Hole
Robinsons Hole
Woods Hole
Hadley Harbor
Tarpaulin Cove
Naushon Point
Weepecket Islands
Uncatena I.
Nonamesset I.
Weepecket
Pt.
Wepecket
Islands
Gannett Rock
Hens & Chickens
Middle Ground
Bull
Middle Ground
Bull
Middle Ground
Bull

No 217 Pindell vs Mullikin - page 148



St Louis Commons.


Surv. 3332
by Milburn in Feb.y 1852
N
Surv 1455
Surv 3363
Louis Labeaume
37½ arp.
artificial drain
Surv. 1484 3-40
Labeaume's
Natural
drain
Southern ditch 11.00
N 74½ E 11.76½
Remains of stone
Surv. 3332
Joseph Brazeau
10 arp.= 13.01 ac.
Surv 1484 3-40
S 23 W 11 50/100
Second St.
N 74½ E 11.76
N 74½ W 11.76 3/4
on reference at e. 23½
Saw Mill
3.25
Brooklyn St.
Surv. 671
Peter Chauteau
73.01 arp.= 77.12 ac.
Surv. 2671
N. Corner of Surv. 1484
N. Boundary of Surv. 3332